SUPREME COURT, U. S.

APPENDIX

Supreme Court, U.S.
FILED
DEC 28 1971
E. ROBERT SEAVER, CLERK

Supreme Court of the United States

TERM,

No. 70-5344

LORENZO WILLIS, ETC.,

Petitioner,

—v.—

PRUDENTIAL INSURANCE COMPANY OF AMERICA

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF GEORGIA

PETITION FOR CERTIORARI FILED JUNE 10, 1971
CERTIORARI GRANTED NOVEMBER 9, 1971

Supreme Court of the United States

TERM,

No. 70-5344

LORENZO WILLIS, ETC.,

Petitioner,

—v.—

PRUDENTIAL INSURANCE COMPANY OF AMERICA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

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IN THE SUPERIOR COURT OF ELBERT COUNTY
STATE OF GEORGIA

Civil Action No. 1081

LORENZO WILLIS, a minor, by Willie Wilbon, next friend,
PLAINTIFF

vs.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
DEFENDANT

NOTICE OF APPEAL

Notice is hereby given that The Prudential Insurance Company of America, defendant above named, hereby appeals to the Court of Appeals of the State of Georgia from the Order granting plaintiff's Motion for Summary Judgment and denying defendant's Motion for Summary Judgment dated and entered in this action on July 14, 1970, and from the judgment thereon in favor of plaintiff dated and entered in this action on July 17, 1970.

Defendant shows that a Certificate of Appealability of the Order of July 14, 1970, denying defendant's Motion for Summary Judgment was filed in this action on July 22, 1970.

The Clerk will please omit from the record on appeal all briefs and memoranda of law filed herein by either party.

There is no transcript of evidence to be filed for inclusion in the record on appeal and the transcript of proceedings will not be filed for inclusion in the record on appeal.

This 4th day of August, 1970.

LAVENDER & CUNNINGHAM

/s/ Woodrow W. Lavender
/s/ Fred F. Cunningham

11 Thomas Street
Elberton, Georgia 30635

KING & SPALDING

/s/ Kirk McAlpin
/s/ A. Felton Jenkins, Jr.

2500 Trust Company of
Georgia Building
Atlanta, Georgia 30303
Telephone: 577-5350

[Filed in Office This 4 day of August, 1970,
/s/ C. H. Rucker, Clerk Superior Court]

[Certificate of Service (Omitted in Printing)]

ELBERT SUPERIOR COURT

Civil Action No. 1081

SUIT UPON SERVICEMAN'S GROUP LIFE INSURANCE POLICY

LORENZO WILLIS, a minor, by Willie Wilbon, next friend,
PLAINTIFF

vs.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
a corporation, DEFENDANT

COMPLAINT

GEORGIA,
ELBERT COUNTY:

To the Superior Court of said County:

The Complaint of Lorenzo Willis, a minor by Willie Wilbon as next friend, respectfully shows to the Court as follows:

1.

The Prudential Insurance Company of America, defendant herein, is a nonresident insurance corporation, doing business in the State of Georgia and has designated its agent for service as William F. Summerall, 5901 Abercorn Expressway, Savannah, Georgia, 31405, who can be served by second original as the designated agent, thereby subjecting defendant to the jurisdiction of this Court.

2.

Plaintiff herein is a minor male, born June 20, 1967, and is a resident of Elbert County, Georgia, who sues by his maternal grandmother, Willie Wilbon, as next friend.

3.

Plaintiff is the illegitimate child of Johnny Cleveland Simpson, late of said county.

4.

The said Johnny Cleveland Simpson, at the time of his death, was a private first class in the United States Army, and lost his life in active duty in Viet Nam on September 19, 1968.

5.

Prior to his death, deceased acknowledged plaintiff as his illegitimate son.

6.

Deceased was insured by the defendant under Group Policy No. G-32000, issued by defendant through the Serviceman's Group Life Insurance program which is a division of the defendant company, for the sum of $10,000, and said policy was in full force and effect at the time of the death of deceased.

7.

Claim was duly made by plaintiff through the office of Serviceman's Group Life Insurance for the benefits under said policy but said claim was rejected upon the ground that an illegitimate child is not entitled to benefits under said policy and the law applicable thereto, and said policy proceeds have since been paid by defendant to the father of deceased.

8.

Deceased had not, prior to his death, designated a beneficiary in writing to receive the policy proceeds.

9.

Deceased left no widow surviving.

10.

Plaintiff is therefore entitled to the policy proceeds in accordance with the United States Code, Title 38, Section 770, as amended (79 Stat. 883), which in relevant part provides:

"(a) Any amount of insurance under this subchapter in force on any member or former member on the date of his death shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date of his death, in the following order of precedence.

"First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received in the uniformed services prior to such death;

"Second, if there be no such beneficiary, to the widow or widower of such member or former member;

"Third, if none of the above, to the child or children of such member or former member and descendants of deceased children by representation;

"Fourth, if none of the above, to the parents of such member or former member or the survivor of them."

11.

The determination of whether plaintiff is entitled to receive the policy proceeds in question is determinable solely according to federal law, and not according to the law of this state of Georgia governing descent and distribution, or insurance matters.

12.

To apply the Georgia law governing descent and distribution, or any other Georgia or federal law relating to the definition of children, so as to deny to illegitimate children the right to insurance proceeds in the present case, would be contrary to the policy of Congress in the Serviceman's Group Life Insurance Act, 38 USCA, § 765 et seq, and would further deny to plaintiff the equal protection and due process of law guaranteed by The Fourteenth Amendment to the Constitution of the United States, as imposing an invidious discrimination against illegitimate children. Plaintiff further shows that such a discrimination and classification falls most heavily upon

plaintiff and other members of the Negro race, with respect to whom illegitimacy is much more prevelant than with respect to members of the white race, and that this condition is no fault of plaintiff, but is attributable to poverty, deprivation, discrimination and the surviving effects of the institution of slavery heretofore existing in the State of Georgia.

18.

Defendant is indebted to plaintiff in the sum of $10,000 because of the facts hereinbefore set forth.

WHEREFORE, plaintiff prays:

(1) That summons issue.

(2) That a second original issue, and that the same be forwarded to the Sheriff's office in Chatham County, Georgia, to be served upon Mr. William F. Summerall, 5901 Abercorn Expressway, Savannah, Georgia, defendant's designated agent for service.

(3) That plaintiff do have and recover of defendant the sum of $10,000 besides interest and cost of suit.

HEARD & LEVERETT

By: /s/ E. Freeman Leverett

P.O. Box 896
Elberton, Georgia 30635

ORIGINAL SUMMONS.

STATE OF GEORGIA
THE SUPERIOR COURT
ELBERT COUNTY

Civil Action, File No. 1081

Page 173

LORENZO WILLIS, a minor, by Willie Wilbon, next friend,
PLAINTIFF

vs.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
a corporation, DEFENDANT

SUMMONS

To the above-named Defendant: The Prudential Insurance Company of America

You are hereby summoned and required to file with the Clerk of said Court and serve upon Heard & Leverett (E. Freeman Leverett) Plaintiff's attorneys, whose address is P.O. Box 896, Elberton, Georgia 30635 an answer to the complaint which is herewith served upon you, within 30 days after service of this summons, upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This the 30th day of July, 1969.

/s/ C. H. Rucker
Clerk of Court

No. 1081

STATE OF GEORGIA

SUPERIOR COURT
CIVIL DIVISION

March Term, 1969

SUMMONS

Verdict and Judgment

ORIGINAL

LORENZO WILLIS, a minor, by Willie Wilbon, next friend

vs.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
a corporation

Filed in office, this 30th day of July, 1969

/s/ C. H. Rucker
Clerk

Heard & Leverett
P.O. Box 896
Elberton, Georgia 30635
Plaintiff's Attorney

_____ COUNTY, GA.

Entered on General Execution Docket Page _____
this _____ day of _____, 19__
_____, Clerk.

CLERK'S COST

_____	Whole Service _____	$_____
To filing and docketing suit	_____	_____
Copying and issuing summons	_____	_____
Issuing _____	extra copies _____	_____
Entering _____	orders _____	_____
Filing _____	Pleas _____	_____
Demurrers	_____	_____
Issuing _____	Subpoenas _____	_____
Entering verdicts	_____	_____
Commission to examine witness	_____	_____
Entering Judgment	_____	_____
Recording Proceedings	_____	_____
Issuing fi. fa.	_____	_____
Entering fi. fa. on Exec't'n D'k't	_____	_____
Entering fi. fa. on Gen'l Ex't'n D'k't	_____	_____

SHERIFF'S COST

To serving _____	writs _____	_____
Serving garnishments	_____	_____
Attending verdict by Jury	_____	_____
Witness	_____	_____
Comm'rs for taking interrogat'rs	_____	_____
Total cost	_____	_____
Levies _____	$_____	
Settlement _____	$_____	

GEORGIA, _____ COUNTY:

I have this day served the Defendant _____ _____ personally with a true copy of the within petition and summons.

This the _____ day of _____, 19____

_____
Sheriff

GEORGIA, _____ COUNTY:

I have this day served the Defendant _____ _____ with a true copy of the within petition and summons by leaving same at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

This the _____ day of _____, 19____

_____
Sheriff

GEORGIA, _____ COUNTY:

I have this day served the Defendant _____ _____ a corporation, with a true copy of the within petition and summons by handing same in person to _____, an officer of said corporation.

Sheriff's Office, Superior Court, Savannah, Ga.

August 1, 1969

I have this day served the within Complaint upon the defendant(s) Prudential Insurance Co. of America by handing a copy thereof to William F. Summerell in person he being Manager of said Company and in charge of office at time of service in Savannah, Chatham County, Ga.

The Return of

/s/ L. H. Johnson
Deputy Sheriff
Chatham Co. Ga.

IN THE SUPERIOR COURT OF ELBERT COUNTY
STATE OF GEORGIA

Civil Action File No. 1081

LORENZO WILLIS, a minor, by Willie Wilbon, next friend,
PLAINTIFF

v.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
DEFENDANT

ANSWER OF DEFENDANT THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

NOW COMES THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, named as defendant in the above-styled action, and makes and files this its answer to plaintiff's complaint, and respectfully shows to the Court:

FIRST DEFENSE

Plaintiff's complaint fails to state a claim against this defendant upon which relief can be granted.

SECOND DEFENSE

1.

Defendant admits the allegations contained in paragraph 1 of plaintiff's complaint.

2.

Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of plaintiff's complaint.

3.

Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of

the allegations contained in paragraph 3 of plaintiff's complaint.

4.

Defendant admits the allegations contained in paragraph 4 of plaintiff's complaint.

5.

Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of plaintiff's complaint.

6.

Defendant admits the allegations contained in paragraph 6 of plaintiff's complaint.

7.

Answering paragraph 7 of plaintiff's complaint, defendant denies that any claim was duly made by plaintiff as alleged; defendant admits that it duly paid Cleveland Simpson, the father of the deceased, the full sum of $10,000.00 pursuant to the policy and Servicemen's Group Life Insurance Act, 79 Stat. 883 (1965), 38 U.S.C.A. § 770; thus satisfying and discharging defendant's obligations under the policy.

8.

Defendant denies the allegations contained in paragraph 8 of plaintiff's complaint and shows that the deceased made a written designation that payment under the policy devolve in the order of precedence set forth in Public Law 89-214, Servicemen's Group Life Insurance Act, 79 Stat. 880 *et seq.* (1965), 38 U.S.C.A. § 765 *et seq.* A copy of said designation is hereto attached marked Exhibit "A" and made a part of this paragraph of this answer.

9.

Defendant admits the allegations contained in paragraph 9 of plaintiff's complaint.

10.

Defendant denies the allegations contained in paragraphs 10, 11, 12 and 13 of plaintiff's complaint.

11.

Further answering, defendant shows that it is in no way liable under the aforementioned life insurance policy.

THIRD DEFENSE

Defendant is not liable to plaintiff in any amount or manner whatsoever for the reason that plaintiff is not a designated beneficiary under the insurance policy which insured deceased Johnny Cleveland Simpson and plaintiff was not named by deceased Johnny Cleveland Simpson as a beneficiary under the said policy. Further, plaintiff is not a person entitled to any of the proceeds of the said policy in accordance with the Servicemen's Group Life Insurance Act, 79 Stat. 880 *et seq.* (1965), 38 U.S.C.A. § 765 *et seq.* Defendant shows that deceased made a written designation that payment under the policy devolve in the order of precedence set forth in Public Law 89-214, the Servicemen's Group Life Insurance Act, 79 Stat. 880 *et seq.* (1965), 38 U.S.C.A. § 765 *et seq.* The written designation is attached hereto marked as Exhibit "A" and is made a part of this paragraph of this answer.

FOURTH DEFENSE

Defendant is not liable to plaintiff in any amount or manner whatsoever for the reason that plaintiff paid Cleveland Simpson, the father of the deceased, the full sum of Ten Thousand Dollars ($10,000) pursuant to the said policy, thus discharging and satisfying defendant's obligations under said policy. In paying the father of the deceased, defendant was duly authorized by, and acted under authority of the policy and the provisions of the Servicemen's Group Life Insurance Act, 79 Stat. 883 (1965), 38 U.S.C.A. § 770, since under the terms of said policy and said act the father of deceased was the proper

person to be paid such proceeds. Therefore, defendant shows that it is in no way liable to the plaintiff.

WHEREFORE, defendant prays:

(a) That plaintiff's claim against it be denied and that plaintiff's complaint be dismissed;

(b) That it have such other and further relief as may be equitable and just in the premises.

LAVENDER & CUNNINGHAM

By /s/ Woodrow W. Lavender

11 Thomas Street
Elberton, Georgia 30635
293-2921

KING & SPALDING

By /s/ A. Felton Jenkins, Jr.

/s/ Kirk McAlpin

Attorneys for Defendant
The Prudential Insurance
Company of America

434 Trust Company of
Georgia Building
Atlanta, Georgia 30303
525-0481

[Certificate of Service (Omitted in Printing)]

SIMPSON, JOHNY CLEVELAND
US 67 075 806

1. NAME (Last, First, MI) AND SERVICE NO. (Address label may be used)

2. ORGANIZATION AND MILITARY ADDRESS

ELECTIONS OF AMOUNT, BENEFICIARY DESIGNATION AND SETTLEMENT OPTIONS FOR SERVICEMEN'S GROUP LIFE INSURANCE

3. I HAVE BEEN ADVISED OF THE PROVISIONS OF PUBLIC LAW 89-214, WHICH INSURES ME FOR $10,000. I NOW HAVE THE OPPORTUNITY TO EITHER ELECT $5,000 SERVICEMEN'S GROUP LIFE INSURANCE OR TO WITHDRAW FROM THIS PROGRAM IN IT'S ENTIRETY.

4. MY ELECTION IS

[X] REMAIN INSURED FOR $10,000. [ ] TO BE INSURED FOR $5,000. [ ] NOT TO BE INSURED.

5. BENEFICIARY DESIGNATION

THE LAW PROVIDES THAT IF I DO NOT DESIGNATE A BENEFICIARY, PAYMENT WILL DEVOLVE, IN THE FOLLOWING ORDER: TO MY WIFE, CHILDREN IN EQUAL SHARES, AND PARENTS IN EQUAL SHARES.

MY DESIRES, WITH RESPECT TO BENEFICIARES, ARE:

[X] HAVE PAYMENT MADE IN THE ORDER OF PRECEDENCE SET FORTH IN THE LAW.

[ ] I DESIGNATE THE FOLLOWING PERSON(S) AS BENEFICIARY(IES):

FIRST NAME, MIDDLE INITIAL AND LAST NAME OF EACH BENEFICIARY (Print or Type)	ADDRESS OF EACH BENEFICIARY	RELATIONSHIP	PERCENT EACH IS TO RECEIVE
PRINCIPAL (First)			
CONTINGENT (Second) (To receive payment if principal beneficiary does not survive me.)			

6. ELECTION OF METHOD OF PAYMENT

I UNDERSTAND THAT MY BENEFICIARY MAY ELECT PAYMENT IN A LUMP-SUM OR IN 36 EQUAL INSTALLMENTS, IF I DO NOT MAKE SUCH AN ELECTION.

MY DESIRES IN THIS RESPECT ARE:

[X] I DO NOT ELECT A SETTLEMENT OPTION.

[ ] I DESIRE TO HAVE SERVICEMEN'S GROUP LIFE INSURANCE PAID IN A LUMP-SUM.

[ ] I DESIRE TO HAVE SERVICEMEN'S GROUP LIFE INSURANCE PAID IN 36 MONTHLY INSTALLMENTS.

DATE	SIGNATURE
15 May 67	I Johnny Cleveland Simpson (S)

EXHIBIT "A"

30

DA FORM 1 OCT 63 3054

U.S. GOVERNMENT PRINTING OFFICE : 1963 O—733-533

ELBERT SUPERIOR COURT

Civil Action No. 1081

SUIT UPON SERVICEMAN'S GROUP LIFE INSURANCE POLICY

LORENZO WILLIS, a minor, by Willie Wilbon, next friend,
PLAINTIFF

vs.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
a corporation, DEFENDANT

PLAINTIFF'S REQUEST FOR ADMISSIONS

TO: The Prudential Insurance Company of America, Defendant.

You are requested to admit for the purpose of this action only the following, with fifteen (15) days after service hereof upon your counsel of record:

1.

That a letter, communication or other inquiry was received by the office of Serviceman's Group Life Insurance from, or on behalf of, Janice Willis, seeking the policy proceeds on behalf of Lorenzo Willis, as illegitimate child of Johnny Cleveland Simpson, deceased.

2.

That said office sent letter to Janice Willis, dated February 3, 1969, a true copy of which is attached hereto, marked "Exhibit A" and by reference made a part hereof.

3.

That on March 7, 1969, E. Freeman Leverett, Attorney for Janice Willis and plaintiff, sent letter to the office of Serviceman's Group Life Insurance, asking for information relative to making a claim to the policy proceeds on behalf of plaintiff, and this letter was answered by letter dated March 19, 1969, a true copy of which is attached hereto, marked "Exhibit B", and by reference made a part hereof.

4.

That the office of Serviceman's Group Life Insurance, above referred to, acts as the authorized agent of defendant in handling claims under such policies.

5.

That the two letters above referred to, "Exhibits A" and "B", respectively, were composed and sent on behalf of defendant.

6.

That defendant did not deny the request (or claim) on behalf of Lorenzo Willis on the ground that a proper claim was not filed.

7.

That the request (or claim) on behalf of Lorenzo Willis was denied by defendant for the reason that defendant had determined as a matter of law, that any illegitimate child is not included within the terms "child or children", as set forth in PL 89-214, 38 USC, Section 770(a) (Third).

8.

That regardless of whether a full and proper claim had been made on behalf of plaintiff, and assuming that such a claim had been presented to defendant, defendant would have in any event denied said claim because of defendant's contention that an illegitimate child is not included within the meaning of 38 USC, Section 770(a) (Third).

This December 24, 1969.

HEARD & LEVERETT

By: /s/ E. Freeman Leverett
Attorneys For Plaintiff

P.O. Box 896
Elberton, Ga.

[Certificate of Service (Omitted in Printing)]

IN THE SUPERIOR COURT OF ELBERT COUNTY
STATE OF GEORGIA

Civil Action No. 1081

LORENZO WILLIS, a minor, by Willie Wilbon, next friend,
PLAINTIFF

v.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
DEFENDANT

DEFENDANT'S ANSWERS TO PLAINTIFF'S
REQUESTS FOR ADMISSIONS

NOW COMES THE PRUDENTIAL INSURANCE COMPANY OF AMERICA and makes and files the following answers to plaintiff's requests for admissions and shows:

1.

Defendant admits that it received a letter dated March 7, 1969 from Attorney E. Freeman Leverett seeking the insurance proceeds involved in this case on behalf of Lorenzo Willis and a copy of said letter is attached to these answers as Exhibit "A".

2.

Defendant admits that it sent a letter dated February 3, 1969 to Janice Willis, but denies that a copy is attached to plaintiff's requests for admissions; a copy of the said letter dated February 3, 1969 is attached to these answers as Exhibit "B".

3.

This defendant admits all of paragraph 3 except the portion of said paragraph which states that a copy of a certain letter is attached to plaintiff's requests for admissions; a copy of a letter dated March 19, 1969 from

defendant's agent to Attorney Leverett is attached to these answers as Exhibit "C".

4.

Admitted.

5.

Admitted with the reservation that the said two letters were not attached to defendant's copy of plaintiff's requests for admissions but are attached to these answers as Exhibits "B" and "C".

6.

Admitted.

7.

Admitted.

8.

Admitted.

This 19 day of January, 1970.

LAVENDER & CUNNINGHAM

By /s/ Woodrow Lavender by AFJ

11 Thomas Street
Elberton, Georgia 30635
293-2921

KING & SPALDING

By /s/ A. Felton Jenkins, Jr.

Attorneys for Defendant
The Prudential Insurance
Company of America

434 Trust Company of
Georgia Building
Atlanta, Georgia 30303
525-0481

[Filed in Office This 21 day of January, 1970,
/s/ C. H. Rucker, Clerk Superior Court]

EXHIBIT A

Law Offices of
HEARD & LEVERETT
25 Thomas Street
ELBERTON, GEORGIA 30635

ROBERT M. HEARD
E. FREEMAN LEVERETT

Associate
L. CLIFFORD ADAMS, JR.

PAYNE & HEARD
1955-1960
PAYNE, HEARD & LEVERETT
1960-1961
Tel. 404-283-2651
P.O. Box 896

March 7, 1969

Office of Servicemen's Group Life Insurance
212 Washington Street
Newark, N. J. 07102

ATTENTION: Mr. J. B. Mehl, Manager

Re: Johnny Cleveland Simpson, US 670 75806

Dear Sirs:

We represent Janice Willis of this City, who is the mother of a 20 months' old child, Lorenzo Willis. The father of this child was the above serviceman. The father was killed in Viet Nam in September, 1968.

Before his death, the serviceman had recognized this child as his, and had paid the delivery expenses, and had applied for an allotment on behalf of the child.

It is my understanding that under the circumstances, this child is entitled to the proceeds of the serviceman's life insurance policy upon the life of the serviceman, since there was no designation of beneficiary.

I would appreciate your sending me a copy of the policy in question, and advising me as to what steps are necessary for this child to receive the proceeds. I would also appreciate your advising me as to the proper persons I should contact in connection with investigating the possibilities of any pension benefits.

Yours very truly,

/s/ E. Freeman Leverett
E. FREEMAN LEVERETT

EFL:er

EXHIBIT B

February 8, 1969

Miss Janice Willis
357 Campbell Street
Elberton, Georgia 30635

Johnny C. Simpson
67 075 806

Dear Miss Willis:

We have been advised by our legal counsel that under the law in the state of Georgia, an illegitimate child (one born out of wedlock) may *not* inherit from the alleged father unless (1) there is a subsequent marriage of the mother and alledged father plus recognition by the father of the child as his, or (2), there is a court proceeding by the father seeking to legitimatize the child.

Unless you are able to furnish proof of either (1) or (2) above, we are obligated to pay the insured's father.

If we do not hear from you within two (2) weeks from the date of this letter, we will assume you are unable to produce the necessary proof and will proceed to pay father.

Sincerely,

J. B. MEHL
Manager

HNK:BEP

EXHIBIT C

March 19, 1969

E. Freeman Leverett
Attorney at Law
25 Thomas Street
Elberton, Georgia 30635

Johnny C. Simpson
US 67 075 806

Dear Mr. Leverett:

In answer to your letter of March 7, 1969, you are informed that at our request Miss Janice Willis forwarded a copy of the Birth Certification of her son Larenzo Willis.

Subsequently, on the advice of our legal counsel, we wrote to Miss Willis explaining that under the Laws of Georgia an illegitimate child could not inherit from his father unless there was subsequent marriage or court proceedings to legitimate the child. A copy of our letter of February 3, 1969 to Miss Willis is attached.

Since this insurance is Group coverage no formal policy is issued to the Servicemen but attached is a copy of Public Law 89-214 which includes the provisions of the policy. As the insured did not name a specific beneficiary, the proceeds, under paragraph 770 (a), were payable to the insured's father as the surviving parent and payment was made to him on February 25, 1969 since there was no reply from Miss Willis to our February 3, 1969 letter.

In response to your question about other benefits for the child we suggest you contact the nearest Veterans' Administration Regional office.

Sincerely,

J. B. MEHL
Manager

EPB:BEP

AFFIDAVIT

STATE OF NEW JERSEY
COUNTY OF ESSEX

Before the undersigned, an officer duly authorized by law to administer oaths, comes Frank G. Koch who, after being duly sworn, deposes and says and says that he is Vice President of The Prudential Insurance Company of America and that he has the authority to make this affidavit and furthermore that he has read plaintiff's requests for admissions and has also read the foregoing answers on behalf of The Prudential Insurance Company of America to said requests and that said answers are true and correct.

/s/ Frank G. Koch

Sworn to and subscribed before me this 16th day of January, 1970.

/s/ Evelyn P. Augustine
Notary public
EVELYN P. AUGUSTINE
Notary Public of New Jersey
My Commission expires May 4, 1971

[Certificate of Service (Omitted in Printing)]

ELBERT SUPERIOR COURT

Civil Action No. 1081

SUIT UPON SERVICEMAN'S GROUP LIFE INSURANCE POLICY

LORENZO WILLIS, a minor, by Willie Wilbon, next friend,
PLAINTIFF

vs.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
a corporation, DEFENDANT

MOTION FOR SUMMARY JUDGMENT ON BEHALF OF PLAINTIFF

Plaintiff moves the Court to enter summary judgment in plaintiff's favor for the relief demanded in the complaint on the ground that there is no genuine issue as to any material fact and that plaintiff is entitled to a judgment as a matter of law. This motion is based upon the admissions in the pleadings, defendant's answers to plaintiff's interrogatories, the depositions of Janice Willis, Willie Wilbon and Cleveland Simpson; and the affidavits of Daniel F. Hobbs, Jr., and Robert A. Lewis, attached hereto as "Exhibit A" and "B" respectively, and by reference made a part hereof. Plaintiff also prays that the Court take judicial notice of a publication entitled "Illegitimate Births: United States, 1938-57," Vital Statistics, Special Reports, Selected Studies Vol. 47, No. 8, Sept. 30, 1960, published by the U. S. Department of Health, Education and Welfare, Public Health Service, attached hereto as "Exhibit C" and by reference made a part hereof.

HEARD & LEVERETT

By: /s/ E. Freeman Leverett
Attorneys for Plaintiff

P. O. Box 896
Elberton, Ga. 30635

ELBERT SUPERIOR COURT

Civil Action No. 1081

SUIT UPON SERVICEMAN'S GROUP LIFE INSURANCE POLICY

LORENZO WILLIS, a minor, by Willie Wilbon, next friend,
PLAINTIFF

vs.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
a corporation, DEFENDANT

ORDER

The above and foregoing motion read and considered. Let the same be filed, and let defendant show cause before me on the 17 day of April, 1970, at the Courthouse in Elberton, Georgia, at 11:00 o'clock A.M., as to why the motion should not be granted.

This February 16, 1970.

/s/ [Illegible]
Judge, Elbert Superior Court

[Certificate of Service (Omitted in Printing)]

"EXHIBIT A"

ELBERT SUPERIOR COURT

Civil Action No. 1081

SUIT UPON SERVICEMAN'S GROUP LIFE INSURANCE POLICY

LORENZO WILLIS, a minor, by Willie Wilbon, next friend,
PLAINTIFF

vs.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
a corporation, DEFENDANT

AFFIDAVIT OF DANIEL F. HOBBS, JR.

GEORGIA, CLARKE COUNTY:

Personally before the undersigned, an officer duly authorized to administer oaths, appeared Daniel F. Hobbs, Jr., who after first being only sworn, deposes and says as follows:

Deponent resides at 310 University Circle, Athens, Georgia, and is Associate Professor of Family and Child Development at the University of Georgia.

Deponent received the B.S. Degree in Psychology at Florida State University in 1951; the M.S. Degree in Family Relations from the same institution in 1954, and the Ph.D. in Family Relations and Sociology at Pennsylvania State University in 1960.

Deponent has taught at Pennsylvania State University, the University of Kansas, the University of North Carolina at Greensboro, University of Chicago, and the University of Georgia. Deponent's special field of study and teaching concerns the family, its history and place in society. This includes the problem of illegitimacy, its causes and incidence. Deponent has also done research in the field of illegitimacy, and is familiar with much of the literature published in this filed.

In dependent's duties as an associate professor of Family and Child Development at the University of Georgia, his studies and teaching duties include, inter alia, consideration of the incidence and causes of illegitimacy as among the various ethnic groups comprising the population of the United States, with particular reference to the Negro and white races.

The rate of illegitimacy is much higher among the Negro population of the United States, particularly in the South, than it is among the white population. It is deponent's opinion that the rate of illegitimacy among Negroes is even greater than statistics published by governmental agencies would indicate. Deponent bases this opinion, among other things upon survey research which he performed in North Carolina. A large number of Negro adolescents were surveyed relative to dating patterns, and a disproportionately large percentage reported that their father was dead. A Negro teacher who was familiar with the adolescents said that this was not true, but that illegitimate Negro children frequently were told that their father was dead in order to hide the fact of illegitimacy.

Interviews with teen-age Negro mothers who kept their illegitimate babies confirmed the opinion that poverty and illegitimacy are positively correlated. Visits to a nursery in a large city and seeing illegitimate Negro babies remain unadopted or unplaced in foster care while white children were placed also illustrates the plight of the illegitimate Negro child. If the cycle of illegitimacy is to be broken, deponent is of the opinion that meeting economic needs is essential.

This higher incidence of illegitimacy among Negroes is generally assumed by scholars dealing with this problem to be attributable in part to the institution of slavery, and perhaps to a greater extent, to the conditions of poverty which prevail among Negroes. The conditions of poverty in turn are attributable in large part to discrimination against the Negro, particularly with respect to job opportunities. This foregoing also constitutes the professional opinion of deponent.

Family life for the Negro was largely influenced by the institution of slavery. Families were indiscriminately separated. Often, small babies were taken from their mother as slaves were marketed. Negroes were bred as though they were animals, and treated as valued property, but seldom as humans. Sex relations were seldom regulated among the slaves, and their masters felt free to force sex relations upon the slave women, either black or white, either with respect to themselves, or on behalf of their friends. Marriages among slaves were generally discouraged, had to be approved by their masters, and was a temporary contract vulnerable to the whims of their master.

Emancipation left a serious problem as to the marital status of free people in the South. Some married the person with whom they had been cohabitating while others took this as an opportunity to acquire a new spouse, but regardless of what the Negro did, the price of his social, economic and moral subservience was painfully evident. Venereal disease was widespread, physical health problems were numerous, and children were sometimes beaten by them as they had been beaten by their masters, and poverty was severe. While the war was over, the Negro's position had changed very little in many respects.

The foregoing is developed more fully in Arthur W. Calhoun, "A Social History of the American Family From Colonial Times To The Present," Barnes and Noble, Inc., 1917, reprinted in 1945. Deponent concurs in these findings insofar as they are set forth above.

Daniel P. Moynihan has shown how the high unemployment rate and the low income of the Negro male has produced a crisis in the Negro family. Generally, the poorer Negro family is larger than the more affluent Negro family, the latter in fact tending to be smaller than its white counterpart. As a result of the large family of the low income Negro, and the greater number of children, the father is unable to support the unit, and the consequence is a broken home and greater dependency upon welfare. As stated by Moynihan, "Using a flexible scale that relates required family income to family size, the Department of Health, Education and Welfare has estimated

that 60 percent of the Negro children in America today are growing up in poverty-stricken families. In these circumstances, the stability of the Negro family, still grievously impaired by the heritage of slavery and segregation, would seem to have been weakened still further." Moynihan, Employment, Income and Ordeal of the Negro Family, printed in Bell and Vogel, "A Modern Introduction to The Family," The Free Press, 1968, pp. 175 et seq. This break-up of the Negro home, with its removal of the father, increases the rate of Negro illegitimacy. In some communities, nearly half or more of the Negroes are illegitimate. In 1963, 24 percent of all nonwhite births in the Nation were illegitimate. Thus, the effect of job discrimination further excerbates the rate of illegitimacy among Negro families. These findings of Moynihan are consistent with those of deponent, and deponent concurs therein.

This affidavit is made to be used as evidence on behalf of plaintiff in support of a motion for summary judgment in the above-stated case, and in any and all other hearings and proceedings that may be had in said case.

/s/ Daniel F. Hobbs, Jr.
DANIEL F. HOBBS, JR.

Sworn to and subscribed before me
this 25th day of November, 1969.

/s/ Elaine R. Rousey
Notary Public

"EXHIBIT B"

ELBERT SUPERIOR COURT

Civil Action No. 1081

SUIT UPON SERVICEMAN'S GROUP LIFE INSURANCE POLICY

LORENZO WILLIS, a minor, by Willie Wilbon, next friend,
PLAINTIFF

vs.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
a corporation, DEFENDANT

AFFIDAVIT OF ROBERT A. LEWIS

GEORGIA,
CLARKE COUNTY

Personally before the undersigned, an officer duly authorized to administer oaths, appeared Robert A. Lewis, who after first being duly sworn, deposes and says as follows:

Deponent resides at 105 Georgetown Drive, Athens, Georgia, and is associate professor of Family Development at the University of Georgia in Athens. Deponent received the B. A. Degree in Philosophy from the University of Wisconsin in 1953; The B. D. Degree from Moravian Theological Seminary in Bethlehem, Pennsylvania in 1956; the M. A. Degree in Sociology from the University of Minnesota in 1966, and the PhD. Degree in Sociology from the University of Minnesota in 1969. Deponent has taught at the University of Minnesota, Augsburg College, and the University of Georgia.

Deponent's special field of study in teaching concerns the family, its history and development. This includes, among other things, the problem of illegitimacy, its causes and incidence, and deponent is familiar with much of the literature published in this field and the statistics and facts related thereto.

The rate of illegitimacy is much higher among the Negro population of the United States, particularly in the South, than it is among the white population. In 1880, only approximately one-third of all Negro children were born in wedlock. See Jessie Bernard, "Marriage in Family Among Negroes," Prentice Hall, 1966.

Over ten million Negroes were brought to America before the year 1800, most of them in slavery. Some slave owners literally considered their slaves as they did livestock and sought to breed them in comparable fashion. Strong healthy males were used as studs and the formalities of marriage often were dispensed with completely. Fathers were sold or traded without their wives and children, and vice versa. This naturally tended to destroy any responsibilities otherwise inherent in such a union, and tended to a breakdown of the Negro family unit. Field hands were most likely to be used as breeding stock, and emphasis was placed on the mother-child unit. Marriages seldom were regularized, and when families were split up there was a tendency to keep small children, at least, with their mother. Many owners reinforced the primary position of the mother and sabotaged the influence of the father by assigning the woman the cabin in which she and her children lived and by issuing to her the rations of food. Men were not encouraged to assume responsibility for wives and children and many of them did not. Thus, under slavery, there emerged a distinctly mother-center family that was to continue in modified form into the post-slavery period.

Emancipation tended mostly to sharpen trends already evident. Where family ties were less secure to begin with, they often broke completely under the stresses that followed Emancipation. Many men who were not formally married to the women whose children they had fathered simply left their former homes to test out the limits of their newly acquired freedom. They clustered about Union Army posts, they went to cities and they roamed aimlessly. Some women, chiefly those without children, did the same thing. Without a history of formal marriage, many of these people formed even more casual unions than existed under slavery. Among a large segment of the

Negro population, a sexual and marital anarchy prevailed. Legal marriages were few, desertion of wives and children was common, and there was no incentive to confine sexual activity to marriage.

This influence of the system of slavery is still evident in the high incidence of Negro illegitimacy. The latter is also exacerbated, by the low socio-economic status of the Negro. In 1960, fully two-thirds of the Nation's non-white population lived in poverty. The large scale migration of Negroes to urban areas commenced around the time of World War I. Marriage continued to be typically a casual union based upon sexual attraction and sexual satisfaction. Of the two partners, the woman was likely to be the most dependable source of income. Negro men fared badly in the competition with unskilled white workers, but Negro women were in demand for menial and domestic work. Without economic leverage, the man's status in the family was low. His wife and children could do without him and the only sources of reward available to him, other women, drinking, and even the prospect of a job elsewhere, led to widespread desertion. The resulting lack of a permanent sexual relationship brings about a situation where there is likely to be a series of "husbands" without the benefit of clergy, and, greater illegitimacy.

The foregoing is set forth in greater detail in Gerald R. Leslie, "The Family And Social Context," p. 286, et seq, Oxford University Press, 1967. Deponent concurs with the observations made therein.

This affidavit is made to be used as evidence on behalf of plaintiff in support of a motion for summary judgment in the above-stated case, and in any and all other hearings and proceedings that may be had in said case.

/s/ Robert A. Lewis
ROBERT A. LEWIS

Sworn to and subscribed before me
this 15th day of January, 1970.

/s/ Jimmie Lee Oglesby
Notary Public

"EXHIBIT C"

Vital Statistics—Special Reports
Selected Studies
Volume 47, Number 8
September 30, 1960

Technical Inf.—Births

ILLEGITIMATE BIRTHS: UNITED STATES, 1938-57

U. S. DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
Public Health Service
National Office of Vital Statistics

[SEAL]

TABLE 1. ILLEGITIMATE LIVE BIRTHS AND ILLEGITIMACY RATIOS, BY COLOR: EACH REPORTING STATE, 1940-57

(By place of residence. Includes only illegitimate births occurring within the reporting area as of specified year. Ratios per 1,000 total live births in specified group. Figures in parentheses are not included in totals)

AREA AND COLOR	NUMBER						RATIO					
	1957[1]	1955	1950	1947	1945	1940	1957[1]	1955	1950	1947	1945	1940
TOTAL, 32 REPORTING STATES[2]	150,420	136,107	107,039	96,755	86,265	67,780	51.0	48.9	42.7	37.2	45.0	39.9
White	47,858	44,230	37,446	41,229	38,080	28,575	19.3	18.6	17.6	18.1	23.0	19.5
Nonwhite	102,562	85,877	69,593	55,526	48,205	39,205	216.6	211.3	185.6	170.5	183.4	170.6
Alabama	8,768	8,689	7,462	6,155	5,992	5,358	104.3	106.2	90.3	69.8	85.2	85.1
White	740	661	642	726	745	660	14.2	13.2	12.9	12.5	16.9	17.0
Nonwhite	8,028	8,028	6,820	5,431	5,247	4,698	250.0	251.6	207.7	180.4	200.0	195.5
Arizona	---	---	---	---	---	(326)	---	---	---	---	---	(27.7)
White	---	---	---	---	---	(249)	---	---	---	---	---	(24.6)
Nonwhite	---	---	---	---	---	(77)	---	---	---	---	---	(47.6)
Arkansas	---	---	---	---	(2,104)	(1,553)	---	---	---	---	(53.1)	(40.5)
White	---	---	---	---	(429)	(387)	---	---	---	---	(14.5)	(13.3)
Nonwhite	---	---	---	---	(1,675)	(1,166)	---	---	---	---	(165.3)	(126.6)
Colorado	---	---	---	---	---	(496)	---	---	---	---	---	(23.4)
White	---	---	---	---	---	(467)	---	---	---	---	---	(22.4)
Nonwhite	---	---	---	---	---	(29)	---	---	---	---	---	(96.5)
Connecticut	---	---	---	---	---	(459)	---	---	---	---	---	(18.2)
White	---	---	---	---	---	(396)	---	---	---	---	---	(16.1)
Nonwhite	---	---	---	---	---	(63)	---	---	---	---	---	(98.7)
Delaware	826	735	591	488	377	340	70.9	69.4	77.3	63.2	63.0	74.0
White	176	164	150	155	127	113	18.2	18.6	24.0	23.5	25.1	28.3
Nonwhite	650	571	441	333	250	227	324.0	323.1	318.4	299.2	272.6	304.7
District of Columbia	3,844	3,470	2,256	2,042	1,699	1,255	188.1	165.8	113.8	94.2	105.3	82.0
White	450	409	352	457	379	254	58.8	43.3	31.7	32.6	34.9	23.8
Nonwhite	3,394	3,061	1,904	1,585	1,320	1,001	265.3	266.9	218.2	206.6	250.0	216.2
Florida	9,130	7,822	5,147	3,723	2,960	2,155	87.7	87.6	79.6	62.3	61.9	63.7
White	1,694	1,378	816	744	653	412	22.5	21.5	17.8	16.7	18.5	17.3
Nonwhite	7,436	6,444	4,331	2,979	2,307	1,743	257.6	256.6	230.8	194.3	183.3	175.0
Georgia	9,908	9,536	7,294	5,759	5,248	4,997	97.1	95.0	79.8	60.7	70.1	76.9
White	1,036	972	758	728	741	598	15.8	15.1	13.4	11.6	15.6	15.2
Nonwhite	8,872	8,566	6,536	5,031	4,507	4,399	243.5	237.4	188.1	157.0	164.7	171.2
Idaho	---	---	---	---	---	(107)	---	---	---	---	---	(9.1)
White	---	---	---	---	---	(104)	---	---	---	---	---	(9.0)
Nonwhite	---	---	---	---	---	(3)	---	---	---	---	---	(31.6)
Illinois	12,020	10,647	6,987	5,562	4,963	3,257	50.3	48.3	36.8	28.5	35.8	26.4
White	3,622	3,398	2,787	3,063	2,992	2,110	17.8	17.9	16.4	17.0	23.3	18.1
Nonwhite	8,398	7,249	4,200	2,519	1,971	1,147	236.1	234.9	211.1	161.6	194.6	167.7
Indiana	3,646	3,190	2,241	1,939	1,841	1,104	31.5	29.4	24.0	20.1	26.9	17.8
White	2,138	1,902	1,455	1,409	1,370	840	20.0	18.9	16.5	15.3	20.9	14.1
Nonwhite	1,508	1,288	786	530	471	264	165.0	162.5	152.5	132.3	167.0	120.2
Iowa	1,200	1,205	1,033	1,105	877	733	18.9	18.9	16.5	17.3	19.5	16.1
White	1,074	1,083	956	1,051	816	699	17.1	17.2	15.4	16.6	18.3	15.5
Nonwhite	126	122	77	54	61	34	155.2	155.2	123.0	113.4	174.3	142.9
Kansas	1,186	1,082	813	742	780	457	22.3	20.4	18.5	16.7	23.2	15.9
White	722	694	530	564	593	318	14.5	13.9	12.6	13.2	18.3	11.5
Nonwhite	464	388	283	178	187	139	136.7	135.8	140.4	103.9	150.7	132.5
Kentucky	3,262	3,094	2,523	2,101	1,942	1,798	43.6	41.9	33.6	26.3	31.9	28.3
White	1,790	1,721	1,497	1,364	1,373	1,252	26.2	25.4	21.5	18.0	23.8	20.7
Nonwhite	1,472	1,373	1,026	737	569	546	229.9	223.0	190.7	181.7	175.7	170.9
Louisiana	7,458	6,971	6,014	5,436	4,770	4,218	82.1	80.9	78.8	72.8	82.5	82.8
White	726	691	560	566	517	520	13.1	13.3	12.4	12.7	14.7	17.4
Nonwhite	6,732	6,280	5,454	4,838	4,253	3,698	190.4	183.6	175.1	175.7	188.2	175.6
Maine	670	699	609	837	847	455	29.2	31.2	28.9	35.1	50.8	30.1
White	646	688	603	828	841	449	28.4	30.9	28.7	34.7	50.5	29.8
Nonwhite	24	11	6	9	6	6	104.3	72.8	101.7	243.2	122.4	133.3
Michigan	6,870	5,987	4,566	4,335	3,470	2,277	32.9	30.4	28.4	26.9	30.8	23.0
White	3,338	3,000	2,646	2,995	2,464	1,779	18.0	17.1	18.0	19.9	23.3	18.7
Nonwhite	3,532	2,987	1,920	1,340	1,006	498	148.5	139.0	136.8	126.9	147.6	120.8
Minnesota	1,992	1,778	1,618	1,735	1,515	1,146	23.2	21.8	21.5	23.0	27.7	21.6
White	1,670	1,500	1,396	1,602	1,373	1,050	19.8	18.7	18.8	21.4	25.5	20.0
Nonwhite	322	278	220	133	142	96	220.2	209.0	215.5	199.7	193.2	156.9
Mississippi	7,800	7,843	6,748	5,873	5,523	4,717	128.1	123.8	103.9	88.4	101.8	89.7
White	298	286	251	320	287	275	11.1	10.3	9.1	9.8	11.9	11.8
Nonwhite	7,502	7,557	6,495	5,553	5,236	4,442	221.1	211.7	173.4	164.3	175.8	150.9

[1]Based on a 50-percent sample of births.
[2]Includes only those States which required reporting of legitimacy status for the entire period. The number of States reporting legitimacy status varies as follows: 1940, 42 States; 1945, 36 States; 1947, 34 States; 1950, 36 States; 1955 and 1957, 35 States.

"EXHIBIT C"

TABLE 1. ILLEGITIMATE LIVE BIRTHS AND ILLEGITIMACY RATIOS, BY COLOR: EACH REPORTING STATE, 1940-57—Continued

(By place of residence. Includes only illegitimate births occurring within the reporting area as of specified year. Ratios per 1,000 total live births in specified group. Figures in parentheses are not included in totals)

AREA AND COLOR	NUMBER						RATIO					
	1957[1]	1955	1950	1947	1945	1940	1957[1]	1955	1950	1947	1945	1940
Missouri	4,834	4,313	3,076	2,452	2,160	1,868	30.3	28.9	26.8	27.2	32.9	30.0
White	1,424	1,428	1,187	1,251	1,108	1,288	16.9	17.3	15.3	15.0	19.6	22.2
Nonwhite	3,470	2,885	1,888	1,201	874	580	218.3	250.6	226.3	173.6	187.8	158.1
Montana	434	408	324	256	177	212	23.9	23.3	20.6	17.0	16.7	18.4
White	262	249	202	180	125	158	19.4	19.1	15.7	13.2	12.5	14.6
Nonwhite	172	159	122	68	52	54	151.9	126.5	143.4	94.6	82.9	80.4
Nevada	(204)	(179)	(84)	---	---	(17)	(30.4)	(28.5)	(22.9)	---	---	(13.1)
White	(124)	(97)	(47)	---	---	(7)	(20.7)	(17.4)	(13.9)	---	---	(3.8)
Nonwhite	(80)	(82)	(37)	---	---	(20)	(110.2)	(125.8)	(127.1)	---	---	(100.5)
New Jersey	3,828	3,145	2,306	2,254	2,089	1,513	29.4	25.9	23.6	21.2	27.0	25.8
White	1,412	1,256	1,082	1,163	1,144	836	12.3	11.6	12.3	11.8	15.9	15.5
Nonwhite	2,416	1,889	1,224	1,091	945	677	252.0	240.1	228.6	234.9	270.9	247.0
New Mexico	---	---	---	---	---	(333)	---	---	---	---	---	(36.2)
White	---	---	---	---	---	(482)	---	---	---	---	---	(33.7)
Nonwhite	---	---	---	---	---	(31)	---	---	---	---	---	(118.3)
North Carolina	10,414	10,177	8,681	8,017	7,079	6,825	91.8	88.2	81.3	71.0	81.0	81.0
White	1,566	1,678	1,684	1,872	1,642	1,487	20.8	21.8	24.0	23.5	27.6	27.2
Nonwhite	8,848	8,499	6,977	6,145	5,437	5,038	232.6	221.6	192.3	184.6	194.9	194.5
North Dakota	318	312	352	377	290	289	29.4	28.1	30.7	32.1	32.1	31.6
White	248	248	284	332	236	245	25.6	24.7	27.1	29.9	28.4	28.9
Nonwhite	70	66	68	45	54	44	231.6	242.2	258.1	230.4	264.6	203.0
Ohio	9,192	7,773	5,184	4,749	4,110	2,565	37.7	34.8	27.9	24.1	31.0	22.3
White	4,558	4,008	3,007	3,172	2,949	1,735	20.8	19.9	17.6	17.1	23.7	16.1
Nonwhite	4,634	3,765	2,177	1,577	1,161	810	187.7	173.7	148.8	129.1	147.4	132.4
Oklahoma	---	---	---	(1,625)	(1,436)	(1,384)	---	---	---	(30.3)	(33.7)	(31.3)
White	---	---	---	(835)	(651)	(678)	---	---	---	(13.2)	(17.0)	(16.9)
Nonwhite	---	---	---	(990)	(804)	(716)	---	---	---	(174.8)	(167.3)	(157.2)
Oregon	958	884	689	595	521	243	25.4	22.8	17.4	16.4	21.6	13.7
White	812	742	541	520	462	222	22.1	19.7	15.3	14.5	19.6	12.7
Nonwhite	146	142	88	75	59	23	142.3	128.6	124.5	130.4	102.3	76.9
Pennsylvania	9,464	9,058	7,660	8,173	7,104	3,598	37.1	37.3	34.6	32.9	40.9	33.6
White	4,498	4,413	4,034	5,038	4,458	2,793	19.5	20.0	19.8	21.8	28.6	24.3
Nonwhite	4,966	4,645	3,626	3,135	2,646	1,805	198.6	206.4	207.7	207.9	212.2	191.2
Rhode Island	534	340	381	417	427	261	28.1	19.0	24.1	22.5	31.3	24.2
White	402	267	323	358	361	227	22.0	15.4	20.4	19.7	27.1	21.5
Nonwhite	132	73	58	59	66	34	182.4	144.8	165.0	180.5	198.2	138.2
South Carolina	(7,366)	(7,180)	(5,437)	---	(4,853)	(4,872)	(116.5)	(112.9)	(94.6)	---	(99.2)	(109.8)
White	(676)	(617)	(634)	---	(630)	(373)	(18.8)	(17.4)	(20.6)	---	(23.6)	(25.6)
Nonwhite	(6,710)	(6,563)	(4,803)	---	(4,315)	(4,299)	(245.2)	(233.6)	(179.9)	---	(189.8)	(198.4)
South Dakota	368	398	347	334	348	188	31.9	31.4	29.5	31.4	37.9	26.2
White	308	235	206	258	248	134	28.5	23.3	22.2	26.3	31.0	22.3
Nonwhite	258	163	141	96	100	54	237.6	178.3	162.3	240.2	148.4	77.0
Tennessee	6,434	6,178	4,743	4,208	3,487	2,595	76.5	72.6	58.3	48.6	53.7	46.5
White	1,644	1,593	1,420	1,518	1,362	957	23.1	23.6	21.6	20.8	25.5	20.2
Nonwhite	4,790	4,585	3,323	2,690	2,105	1,638	258.6	294.1	205.8	197.0	193.9	182.1
Texas	11,092	9,838	6,872	5,780	5,455	3,787	44.2	41.4	33.7	29.1	34.3	29.7
White	3,946	3,579	2,583	2,437	2,430	1,801	18.4	17.4	14.6	13.9	17.6	18.2
Nonwhite	7,146	6,260	4,289	3,343	3,025	1,986	194.3	188.2	156.0	142.4	154.1	134.4
Utah	330	328	304	192	237	95	11.9	9.2	9.6	8.8	13.1	7.0
White	298	300	192	183	230	89	11.3	8.2	9.2	8.5	14.9	8.6
Nonwhite	32	28	12	9	7	6	41.8	38.8	34.7	34.2	25.5	40.8
Vermont	---	---	(197)	(297)	(266)	(214)	---	---	(21.9)	(30.6)	(39.0)	(32.0)
White	---	---	(195)	(297)	(266)	(214)	---	---	(21.7)	(30.6)	(38.7)	(32.0)
Nonwhite	---	---	(2)	(-)	(2)	(-)	---	---	(400.0)	(0)	(400.0)	(0)
Virginia	7,322	6,817	5,510	5,500	5,054	4,169	75.3	72.1	67.2	64.1	73.4	75.5
White	1,804	1,549	1,348	1,550	1,462	1,062	22.2	22.1	22.2	23.6	29.1	27.5
Nonwhite	5,718	5,268	4,162	3,950	3,592	3,077	227.9	218.5	204.8	196.5	213.5	190.6
Washington	1,690	1,323	973	1,274	1,129	680	25.6	21.2	17.4	21.8	25.3	17.1
White	1,382	1,068	803	1,130	1,020	612	22.2	17.9	14.9	19.9	23.6	15.0
Nonwhite	288	255	170	144	108	68	88.6	89.3	85.9	88.0	78.1	81.8
West Virginia	2,452	2,427	2,434	2,552	2,294	2,068	53.5	54.9	48.2	46.3	57.7	49.1
White	1,888	1,862	1,886	2,068	1,863	1,764	45.2	44.6	40.0	38.8	50.5	44.2
Nonwhite	564	565	538	484	391	304	231.7	219.3	171.3	177.2	163.0	138.2
Wisconsin	1,940	1,638	1,473	1,753	1,861	1,078	20.0	17.7	17.8	20.4	25.4	19.6
White	1,488	1,310	1,253	1,567	1,631	888	15.9	14.6	15.4	18.9	23.6	19.2
Nonwhite	452	328	220	186	130	89	128.3	124.2	145	198.2	177.4	134.2
Wyoming	(174)	(149)	(98)	---	---	---	(21.2)	(17.3)	(12.5)	---	---	---
White	(150)	(120)	(78)	---	---	---	(19.0)	(14.4)	(10.2)	---	---	---
Nonwhite	(24)	(29)	(20)	---	---	---	(75.0)	(108.8)	(88.9)	---	---	---

[1]Based on a 50-percent sample of births.

"EXHIBIT C"

IN THE SUPERIOR COURT OF ELBERT COUNTY
STATE OF GEORGIA

Civil Action File No. 1081

LORENZO WILLIS, a minor, by Willie Wilbon, next friend,
PLAINTIFF

vs.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
DEFENDANT

CROSS-MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANT, PRUDENTIAL INSURANCE COMPANY OF AMERICA

NOW COMES THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, named as defendant in the above styled action, and moves this Court, pursuant to Section 56 (b) of the Georgia Civil Practice Act (Georgia Code Annotated, § 81A-156(b)) to enter a summary judgment in favor of defendant against plaintiff on the ground that there is no genuine issue as to any material fact and that this defendant is entitled to judgment as a matter of law.

This motion is based upon:

(a) The pleadings on file in this case, including plaintiff's complaint, defendant's answer, plaintiff's requests for admissions and defendant's responses thereto, plaintiff's motion for summary judgment and the affidavits attached thereto, together with all attachments to said pleadings;

(b) The deposition of Cleveland Simpson taken on February 6, 1970, a copy of which has been filed with this Court.

WHEREFORE, defendant prays that its motion be inquired into and a summary judgment in its favor be granted and that plaintiff's claim against it be dismissed.

This 25th day of February, 1970.

LAVENDER & CUNNINGHAM

By: /s/ Woodrow W. Lavender

11 Thomas Street
Elberton, Georgia 30635

KING & SPALDING

By: /s/ A. Felton Jenkins, Jr.

Attorneys for Defendant,
The Prudential Insurance
Company of America

2500 Trust Company of
Georgia Building
Atlanta, Georgia 30303

IN THE SUPERIOR COURT OF ELBERT COUNTY
STATE OF GEORGIA

Civil Action File No. 1081

LORENZO WILLIS, a minor, by Willie Wilbon, next friend,
PLAINTIFF

vs.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
DEFENDANT

ORDER

The above and foregoing Cross-Motion for Summary Judgment on behalf of defendant having been read and considered, let the same be filed, and let plaintiff show cause before me on the 17 day of April, 1970, at the Courthouse in Elberton, Georgia, at 11 o'clock, A.M., as to why the motion should not be granted.

This 2nd day of March, 1970.

/s/ John W. [*Illegible*]
Judge, Elbert Superior Court

[Certificate of Service (Omitted in Printing)]

ELBERT SUPERIOR COURT
STATE OF GEORGIA

Number 1081

LORENZO WILLIS, a minor, by WILLIE WILBON, next friend

vs.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a corporation

ELBERTON, GEORGIA FEBRUARY 6, 1970
10:00 O'Clock A. M.

This is the deposition of Janice Willis, a party of adverse interests, taken by the Defendant for the purposes of discovery, cross examination and all other purposes as provided by law. Filing, notice of filing, and all other formalities of law are waived. This deposition is taken pursuant to agreement of counsel, counsel for both parties being present. All objectoins except those relating to the form of the question will be reserved until the time of trial or until the time of the use of the deposition.

APPEARANCES:

For Plaintiff:

Mr. E. Freeman Leverett

For Defendant:

Mr. Woodrow W. Lavender
Mr. Fred Cunningham

JANICE WILLIS

being first duly sworn, testified as follows:

CROSS EXAMINATION

BY MR. LAVENDER:

Q State your full name.
A Janice Willis.

Q Where do you live?
A 357 Campbell Street.
Q Is that in Elberton?
A Yes sir.
Q How old are you?
A Seventeen.
Q What is your mother's name?
A Willie Wilbon.
Q What is your father's name?
A Lynwood Willis.
Q Is your father living?
A Yes sir.
Q Are he and your mother divorced?
A No sir, they never have been married.
Q They were not married at the time of your birth?
A Yes sir, they were not married.
Q Where does your father live?
A He lives in Athens.
Q Is he married now?
A Yes sir.
Q Is your mother married now?
A Yes sir.
Q What is her husband's name?
A Joe Wilbon.
Q Where does he live?
A He live in Elberton.
Q Do you know the address?
A 357 Campbell.
Q Is he and your mother living together at the same place?
A Yes sir.
Q And you live with them?
A Yes sir.
Q How long have you been living with them?
A All of my life.
Q Did your mother and father at anytime live together?
A My real father?
Q Yes.
A No sir.
Q The only father that you have ever lived with or have any knowledge of is Joe Wilbon?

A No sir, I have lived with my real father sometimes.
Q When is the last time that you have lived with him?
A I have been over there about two or three weeks ago.
Q How long do you live with your father when you go over there?
A About a month or two months.
Q At the time?
A Yes sir.
Q Did you live with him anytime in 1969?
A Yes sir.
Q How long?
A About a month or two months.
Q Do you remember what those months were?
A I think it was during the summer.
Q Did you stay with your father any during 1968, year before last?
A I don't think so.
Q You don't think that you were with him at anytime during 1968?
A No sir.
Q Did you stay with your father any during 1967?
A No sir.
Q That was two years ago?
A Yes sir.
Q Did you stay with him any in 1966? That would be three years ago?
A No sir.
Q When did you stay with your father any the last time that you remember that you spent sometime with your father in Athens prior to 1969?
A I was up there this year. I have been up there this year.
Q Before 1969. Are these visits to your father just recent visits? In years past, you haven't stayed with him any?
A Not very much, I haven't stayed with him.
Q Did you ever go to school in Clarke County?
A No sir.
Q Where did you go to school?
A At Blackwell.

Q Blackwell Memorial at Elberton, Georgia?
A Yes sir.
Q Are you in school now?
A No sir.
Q How old were you when you quit school?
A Fifteen, I think.
Q What grade did you complete?
A Through the 9th.
Q You went through the 9th grade?
A Yes sir.
Q You can read, of course, then?
A Yes sir.
Q You understand letters that you get and so forth?
A Yes sir.
Q Are you married now?
A No sir.
Q Do you have a boyfriend?
A No sir.
Q What grade were you in when you started dating?
A The 7th grade, I think.
Q How old were you at that time?
A Twelve or thirteen, I think.
Q Who was the first boy that you ever dated?
A Johnny Cleveland Simpson.
Q Was Johnny Cleveland Simpson in school?
A No sir, I don't think. I am not for sure if he was.
Q How old was Johnny Cleveland Simpson?
A I don't know how old he was when I was dating him.
Q And you were in the 7th grade at this time?
A Yes sir.
Q Did you ever date any other boy?
A No sir.
Q While you were in the 7th grade?
A No sir.
Q How many years did you stay in the 7th grade?
A One
Q You were promoted the first year?
A Yes sir.
Q Then you went to the eighth grade?
A Yes sir.

Q Who were you dating then in the eighth grade?
A Johnny, he was the only boy I ever went with.
Q Johnny Cleveland Simpson is the only boy that you ever dated?
A Yes sir.
Q Where did you all go on your dates? Did he come to your house?
A He came to my house.
Q Where would you go?
A We didn't hardly go nowhere.
Q When you were in the 9th grade, you were still dating Johnny Cleveland Simpson?
A Yes sir.
Q Do you know how old Johnny was at that time?
A No sir, I don't think so. I don't know how old he was.
Q Was he about your age or was he considerably younger or considerably older?
A He was older.
Q But you don't know just how much?
A No sir.
Q Were you dating Johnny at the time that he went in the service?
A Yes sir.
Q Was Johnny working just before he went in the service?
A Yes sir, he was working.
Q Where was he working?
A He was working at the silk mill, I think.
Q Did he ever have any other job that you know about?
A No sir, I think that was the first place that he worked at.
Q The silk mill was the first place that he worked and so far as you know that is the place that he was working when he went in the service?
A Yes sir.
Q How frequently did you and Johnny date?
A I would mostly see him on the weekends.
Q On the weekends?
A Yes sir, he worked late at night.

Q He was on the night shift?
A Yes sir.
Q Did he work on the night shift on the weekends?
A No sir, he would be off Saturday and Sunday.
Q So, you and him would be together on Saturday and Sunday?
A Yes sir.
Q Did he come down to your house?
A Yes sir.
Q Where would he go from there?
A He would probably go home.
Q You were still in school at this time?
A I quit school when I was in the 9th grade.
Q Did you go to work?
A I worked for Mrs. Harper for a while.
Q Which Mrs. Harper is this?
A Martha Ann Harper.
Q Did you and Johnny ever talk about getting married?
A Yes sir.
Q Did you have a date set?
A No sir. He gave me an engagement ring.
Q Do you have the engagement ring?
A I took it back up to the place up there, up to the Jewel Box.
Q In other words, he hadn't completely paid for it?
A No sir. He told me, the man told me that if he had had insurance, and he wanted me to bring them back up there, so I bought them back to the Jewel Box.
Q Who told you this, Janice?
A The boss man, I think.
Q Said that he didn't have any insurance?
A No sir, he didn't have no insurance on the ring.
Q Did he tell you that Johnny hadn't completely paid for it?
A No sir, he hadn't completely paid for it.
Q How long had you had the engagement ring?
A A year, I think.
Q How long altogether did you go with Johnny?
A He was the only boy that I ever dated.

Q Did you date any other boys after he went in service?
A No sir.
Q Are you dating any boys now?
A No sir.
Q How many children do you have?
A One.
Q What is his name?
A Lorenzo Willis.
Q Do you know who the father of this child was or is?
A Yes sir.
Q Can you explain to me how you know who the father is?
A Yes sir.
Q How?
A I know that he is the only boy that I ever had an affair with. That is the reason I know.
Q When you mean to say that he is the only boy that you ever had an affair with. Do you mean that you had an intercourse, sex relations?
A Yes sir, he is the only boy I ever went with.
Q How many times.
A I don't know how many times.
Q Many times?
A Yes sir.
Q When was the first time? What grade were you in?
A I was in the 8th grade, I think.
Q Where were you?
A At home.
Q Do you remember when this was? Do you remember what year it was? When were you in the 8th grade?
A In 1965 or 1964, one of those years.
Q And you and Johnny had intercourse at other times after this?
A Yes sir, right after the baby was born or something like that?
Q Yes.
A Well, I didn't see him much, because he was in the army. I didn't see him but once.
Q Before the baby was born, did you have intercourse frequently?

A Yes sir.
Q Every weekend?
A No sir, not every weekend.
Q Would you always be at your home?
A Yes sir.
Q Where was Johnny when you knew that you were pregnant?
A He was at home, I think.
Q Still working at the silk mill?
A Yes sir.
Q Did you talk to him about it?
A Yes sir, him and my mother talked about it.
Q He and your mother talked about it?
A Yes sir.
Q Did you ever talk to him about it? Did you tell him that you were pregnant?
A Yes sir.
Q What did he say?
A He didn't say anything. He asked me did I want to get married, and I told him that I wasn't ready to get married.
Q Was this before he got you the ring?
A Yes sir, I think so.
Q In other words, you told him that you were pregnant, and he asked you if you wanted to get married?
A Yes sir.
Q And you told him that you were not ready to get married?
A No sir.
Q What did you tell him that you wanted to do?
A I just said that I wasn't ready to get married, not right then.
Q Did you have somebody else in mind that you thought that you might want to date?
A No sir.
Q Normally, I don't ask people this. It seems rather unusual. Why did you tell him that you didn't want to get married at that time, not ready to get married?
A I thougth I was too young then.
Q You knew that you were about to become a mother, didn't you.

A Yes sir.

Q You weren't too young for that. This is the only reason that you thought—

A I was going to get married after he got out of service.

Q In the meantime, what arrangements were made about the baby?

A He was going to keep the baby up.

Q How long had you been pregnant when he went into service?

A I had the baby a little after he went into service.

Q In other words, he hadn't been in the service long before the baby was born?

A No sir, he hadn't been in the service long.

Q Did he make arrangements for the lying in costs, and arrangements for the baby's birth, and so forth, before he left?

A He arranged for the doctor, when I was going to the doctor. The hospital bill, his father had to pay it. He signed to get me out of the hospital.

Q Who paid the doctor bill?

A Johnny paid the doctor bill.

Q Who was the doctor?

A Dr. Campbell.

Q Has the doctor bill been paid?

A I don't know about the hospital bill, but I think that the doctor bill has been paid.

Q What did you name your son?

A Lorenzo Willis.

Q If you knew that Johnny Cleveland was the father, why didn't you name him Lorenzo Willis Cleveland?

A I didn't know that you could name a baby after them unless you were married.

Q Do you recall them coming around to you to talk to you about filling out the birth certificate?

A I didn't understand you.

Q Did anybody talk to you about the birth certificate? Did they ask you what you wanted his name to be and so forth?

A No sir.

Q Who did you tell what his name was?
A Johnny's sister named him.
Q Who gave the doctor the information to put on the birth certificate?
A I did.
Q What name did you give them?
A Lorenzo Willis.
Q Did you tell them at that time who the father was?
A Yes sir.
Q Who did you tell who the father was?
A Johnny Cleveland Simpson.
Q Who was it that you told this?
A A nurse that came around.
Q Do you know who the nurse was?
A No sir.
Q I believe you stated that you didn't know if the hospital bill has been paid or not?
A No sir.
Q And you believe that the doctor bill has been paid?
A Yes sir.
Q Do you know whether the doctor bill has been paid or not?
A Well, I don't get no doctor bill. I get hospital bills.
Q Have you been in the hospital since the baby was born?
A Yes sir.
Q How many times?
A I have been up to the Elbert County Hospital and then I went to the Augusta Hospital, and I stayed at Augusta a month and I stayed up here about three weeks at Elbert County.
Q What was your trouble?
A I had gall bladder.
Q Have you been pregnant since the baby was born?
A No sir.
Q Who signed for the hospital bill?
A Johnny's father.
Q Do you recall getting a letter from the office of Service Men's Group Life Insurance about February 3, 1969?
A I don't think so.

Q If I were to show you a copy; is that your name up there and correct address?

A Yes sir.

Q And this is Johnny C. Simpson, and his number?

A Yes sir.

Q After looking at that, do you remember getting something like that in the mail?

A Dated February?

Q Yes, dated February 3, 1969?

A I think so.

Q Can you read that letter?

A Yes sir.

Q Read it there now, and refresh your memory, you don't have to read it out loud, and I want to ask you some questions about it, and see if you remember. Do you remember that letter, Janice?

A Yes sir.

Q Did you understand that you were supposed to be back in touch with them within two weeks?

A Yes sir, but—

Q What did you do—

MR. LEVERETT: She wanted to explain her answer. Go ahead and explain what you were going to say, Janice.

A I had forgot, but I had, you know, called, but I thought that he was talking about in February, stay in touch with him in February, or January.

Q What did you do with this letter, Janice?

A I still have got it there at home.

Q Did you answer it?

A No sir.

Q You never did answer it back?

A No sir.

Q Did anybody ever answer it for you?

A I am not for sure.

Q So far as you know, you never did do anything in response to this letter by way of answer?

A No sir, I don't think so.

Q So far as you know, nobody never did do it for you?

A No sir.

Q Janice, you read this letter of February 3rd.
A Yes sir.
Q And you understood it, and I interrupted you, and Freeman called it to my attention and you explained. You said that you made no response or no reply to it. You started to explain and I interrupted, and so I want to give you an opportunity again. Why did you not answer the letter?
A I thought he said in January or February.
Q When did you answer the letter?
A I don't definitely know. I might still have it there at home, I am not sure.
Q Did you ever answer the letter?
A I am not for sure.
Q Did you answer your letter or did your lawyer answer it for you?
A I took some papers up there.
Q You took some papers where?
A I called and I told them about some paper that I had, and he told my mother to bring them by there.
Q Wait a minute, you confuse me there. You called them and he told your mother to bring them by there.
A Yes sir.
Q Who did you call?
A I called Mr. Freeman.
Q You called Mr. Leverett here?
A Yes sir.
Q What did he tell you?
A To bring the papers by there and let him see them.
Q He told you to bring the papers by there?
A Yes sir.
Q Did you take them by there?
A No sir, my mother did.
Q Who took them by there?
A I think that my mother took them.
Q I see, okay. I believe you told me a while ago that you mother talked to Cleveland, to Johnny, about your being pregnant. Were you present when your mother talked to him?
A Yes sir, I was at home.

Q Did you hear what she and Johnny had to say?
A No sir.
Q You were at home but you were not present at the time that they were talking?
A No sir, I didn't hear what they were talking about.
Q Had you at that—Well, you just said that you don't know what your mother said, and you don't know what Johnny said, do you?
A No sir.
Q Who did you first tell that you were pregnant? Who was the first person that you told?
A I didn't tell anybody until my mother took me to the doctor.
Q And the doctor told your mama?
A Yes sir.
Q Did your mother talk to you about it?
A Yes sir.
Q What did you tell her?
A I told her that I was pregnant, and she said that she was going to take me to the doctor, and so me and her went to the doctor, that day, the next day.
Q And the doctor confirmed it?
A Yes sir.
Q Then, what did your mother do?
A She said that she wanted to talk to Johnny, and one day he came over there. She said that she wanted to see him, and he came over there.
Q Now, this was before you had told Johnny that you were pregnant?
A Yes sir.
Q That your mother talked to him?
A Yes sir.
Q And your mother and Johnny had some sort of discussion, but you don't know what went on. Did your mother tell you what he said?
A She told me that he said that he wanted to get married, that he would marry me, and I told her that I was not ready to get married.
Q You told her that you wouldn't marry him?
A No sir.

Q Then, how long was it after that that you and Johnny talked about it?
A It wasn't too long after.
Q Where were you at the time that you and Johnny talked about it?
A At home.
Q Did you ever meet Johnny at any other place?
A No sir.
Q Did you and Johnny have intercourse after you knew that you were pregnant?
A Yes sir.
Q Did you have an intercourse after your mother had talked to him after you were pregnant?
A Right after I was pregnant?
Q Yes.
A Yes sir.
Q Did you have intercourse after you had talked to him and he said, he asked if you wanted to get married, and you said that you weren't ready?
A Yes sir.
Q At what place did these intercourses take place?
A In my home.
Q Always at your home?
A Yes sir.
Q Did all, as far as you can recall, did all of the times that you had intercourse take place at your home?
A Yes sir.
Q Was your mother present?
A Most of the time.
Q Did she know what was going on?
A No sir.
Q Where was she, in a different part of the house?
A Yes sir.
Q Where were you and Johnny?
A We have got another room, a living room.
Q These always took place in the living room?
A Yes sir.
Q But your mother was there in the house?
A Yes sir.
Q Was your stepfather ever there?
A Well, most of the time he was.

Q Did you ever go up and talk to Mr. Leverett about this matter?
A Yes sir, I think so.
Q Did he file claim for you?
A Yes sir.

FURTHER CROSS EXAMINATION

BY MR. CUNNINGHAM:

Q Janice, this letter that we have been talking about here that you got in February of 1969, that is right, isn't it?
A Yes sir.
Q And I believe in answer to Mr. Lavender's questions you told him that you understood that you could answer it in January or February, is that right?
A Yes sir.
Q You didn't answer it in January, did you?
A No sir.
Q And you didn't answer it in February, did you?
A No sir.
Q When did you send these papers up to Mr. Leverett by your mother?
A I though that I told her one day to carry them up there. I know that I called and she called one day and told them that she had some papers. She might have forgotten about them, I am not sure.
Q Do you remember what month that was?
A No sir.
Q Was that in January or February?
A I don't definitely know which month it was in.
Q Was it in February, you think?
A I ain't got no papers lately, in February.
Q Would it have been in March or April that you did this?
A I am not for sure that I remember which date it was.
Q What made you decide to do this?
A I didn't understand you.
Q What made you decide to take the papers up there?

A The paper that I took when I changed my mail, and the papers that I got lately, I think. I changed my mail and I haven't got my check lately, so that is the only paper that I think that I took.

Q What kind of check was this that you hadn't got?

A The check, I had change my mail. This is the only paper, I think, lately that I got.

Q What was the purpose in sending the papers up to Mr. Leverett?

A I wanted him to see those important papers, take them and let Mr. Freeman see them.

Q And you don't remember when this was?

A No sir.

DIRECT EXAMINATION

BY MR. LEVERETT:

Q Janice, for the record, you are a member of the negro race, is that right?

A Yes sir.

Q Where is your home? What do you consider your home?

A Here in Elberton.

Q These times that you stated that you went over and stayed with your father, were you just visiting him?

A Yes sir.

Q You have never lived in Clarke County as your home?

A No sir.

Q What is your mother's occupation?

A She is a maid.

Q Is that what she has done all of her life so far as you know?

A Yes sir, she worked at the hotel, a maid.

Q Do you know how much education your mother has got?

A I don't think that she has very much.

Q What about your father, do you know how much he had?

A No sir.

Q Did you finish the 9th grade?
A In the middle.
Q You quit in the middle of it?
A Yes sir.
Q And you were about 15 years old then?
A Yes sir.
Q Were you pregnant when you quit?
A Yes sir.
Q Is that the reason that you quit?
A Yes sir.
Q Who is the father of Lorenzo?
A Johnny Cleveland Simpson.
Q Did you ever go with any other boys besides Johnny?
A No sir.
Q Did you ever have sex relations with any boy or man besides Johnny?
A No sir.
Q When was the child born?
A June 20, 1967.
Q And at that time, how long had you been going with Johnny?
A A long time.
Q Had it been more than a year?
A It had been way more than a year.
Q When did Johnny go into the army?
A I believe that he went in May.
Q Of 1967?
A Yes sir.
Q About a month or so before Lorenzo was born?
A Yes sir.
Q Did Johnny ever come home after he went in the army?
A He came home once.
Q Did he come by to see you?
A Yes sir.
Q Did he see Lorenzo?
A Yes sir, he took him home with him.
Q Did you ever discuss the matter with him when he came home on this occasion? Did you talk about the child any?
A Yes sir.

Q What did he say?
A He told me that he was willing to keep up the baby, or something like that.
Q Did he say anything about whether or not it was his baby?
A Yes sir, he said that it was his baby.
Q Did Johnny ever write you while he was in the army?
A Yes sir.
Q Did he ever ask you about how you were getting along or about the baby?
A Yes sir.
Q Do you have those letters?
A No sir, I couldn't find those letters he wrote me.
Q Do you recall my asking you to try to find them and to bring them into me?
A Yes sir.
Q Were you able to find them?
A No sir.
Q In any of these letters, did Johnny say anything about the baby in any of his letters?
A Yes sir.
Q What did he say about it? What did he have to say about him?
A He asked me how old the baby was, did he have any teeth or something like that.
Q Did he say anything in the letters about whose baby it was?
A Yes sir, he always said it was his baby.
Q Did he ever deny that it was his baby?
A No sir.
Q Did Johnny ever send you any money after you got pregnant?
A Yes sir.
Q How did he send it to you?
A Well, the first money that he sent me, he sent me a money order.
Q How did he send you any other?
A The last he sent me, he sent a money order, but he wrote me and asked me did I get it, and I didn't get it,

and he said that he was going to send more, and he sent his government check.

(Reporter marks Plaintiff's Exhibit Number 1)

Q When you went to Dr. Campbell, did Dr. Campbell tell you that he would treat you and carry you through the delivery, or did he tell you that you first had to get something done?

A He told me that he would wait on me, but Johnny would have to sign, so my mama called the next day, and he went up there and signed the paper, and so he started giving me check ups.

Q I hand you Plaintiff's Exhibit 1 and I ask you if you recognize this signature right there?

A Yes.

Q Whose signature is that?

A Johnny's.

Q Were you present when he signed it?

A No sir, my mother was.

Q Can you identify his signature?

A Yes sir.

Q Has he written you while he was in the service?

A Yes sir.

Q Did Johnny pay the doctor's bill himself or who paid it for him?

A I think he paid the doctor bill by the week.

Q When you went in the hospital, who signed you out of the hospital?

A His daddy paid $50 for me to get out of the hospital.

Q Since you have gotten out of the hospital, has Johnn's daddy come by to see the baby?

A I don't really know, I don't think so.

Q What about Johnny's mother or sister, have they ever come by to see him?

A His sister comes and gets him a lot and take him to her home.

Q Who is his sister?

A Patricia Cleveland Simpson.

Q Had you ever been married before?

A No sir.

Q Had Johnny ever been married before when you and he started going together?

A No sir, he hadn't been married.

MR. LEVERETT: It is agreed or stipulated that the letter dated February 3, 1969, addressed to Janice Willis, concerning which counsel for defendant has ask this witness about receipt of this letter and answering that letter, that that is Exhibit B to the Answers of Defendant to Plaintiff's Request for Admissions.

Q Are you getting any social security checks now?

A Yes sir.

Q For Johnny's death?

A Yes sir.

Q Are you getting any pension checks from the army as a result of, that I applied for you?

A Yes sir.

Q How much are you getting a month from social security?

A Eighty Two dollars and sixty cents.

Q How much are you getting from the army pension check?

A Eighty dollars.

Q That check for $80, where does that come from? Is it a Veterans Administration check?

A Yes sir, I think that is what it is.

MR. LEVERETT: It is stipulated that Defendant's Exhibit 1, the birth certificate, is an exhibit to the deposition.

[Certificate (Omitted in Printing)]

PLAINTIFF'S EXHIBIT 1

A. S. JOHNSON, JR., M. D. McALPIN H. ARNOLD, M. D.
HAROLD E. CAMPBELL, M. D.
46 Laurel Drive
Elberton, Georgia 30635

Phone 263-1914

22 March 1967

I hereby agree to pay $10.00 a week toward the delivery and any complications that should arise for Janice Willis, beginning 25 March 1967.

/s/ Johnny Simpson
JOHNNY SIMPSON
136 Burch St.
Elberton, Ga.
Works Elberton Mills

DEFENDANT'S EXHIBIT 1

CERTIFIED ABSTRACT OF BIRTH

CUSTODIAN'S NO. 9464-P

NAME OF CHILD: Larenzo Willis

SEX: MALE ☒ FEMALE ☐ | HOUR OF BIRTH: P.M. 11:20 P.M. | DATE OF BIRTH: June 20, 1967

THIS BIRTH: Single ☒ Twin ☐ Triplet ☐ | IF TWIN OR TRIPLET, THIS CHILD BORN: 1st ☐ 2nd ☐ 3rd ☐

PLACE OF BIRTH—COUNTY: Elbert | USUAL RESIDENCE OF MOTHER—COUNTY: Elbert

CITY OR TOWN: Elberton, Georgia | CITY OR TOWN: Elberton, Georgia STATE:

NAME OF HOSPITAL: Elberton-Elbert County Hospital | ADDRESS—(Street Address or Rural Route Number): 357 Campbell Street

NAME OF FATHER:

RACE: | AGE AT TIME OF THIS BIRTH: | BIRTHPLACE OF FATHER:

USUAL OCCUPATION: | KIND OF BUSINESS OR INDUSTRY:

MAIDEN NAME OF MOTHER: Janice Willis

RACE: negro | AGE AT TIME OF THIS BIRTH: 15 | BIRTHPLACE OF MOTHER: Elbert County, Ga.

PREVIOUS DELIVERIES TO MOTHER (Do Not Include This Birth)	NUMBER OF OTHER CHILDREN NOW LIVING	NUMBER OF OTHER CHILDREN BORN ALIVE—NOW DEAD	NUMBER OF FETAL DEATHS OF ANY GESTATION AGE
	0	0	0

ATTENDANT: A. S. Johnson, Jr., M.D. ☐ Midwife

ATTENDANT'S POST OFFICE ADDRESS: Elberton, Ga.

LOCAL REGISTRAR: Dorothy E. Drennan

DATE FILED: 7-3-67

DATE OF AMENDMENT OR CORRECTION:

CORRECTIONS MADE:

ITEM	AS ORIGINALLY SHOWN

State of Georgia

County of Elbert

I hereby certify that the foregoing is a true and correct abstract of the facts of birth as shown on a permanent record of birth on file in this office.

Signed _____
Custodian of Vital Records - Ordinary

SEAL

P-5.75
Furnished by Georgia Department of Public Health

ELBERT SUPERIOR COURT, STATE OF GEORGIA

Number 1081

LORENZO WILLIS, a minor, by Willie Wilbon, next friend

vs.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a corporation

ELBERTON, GEORGIA February 6, 1970
10:40 O'Clock A. M.

This is the deposition of CLEVELAND SIMPSON taken on behalf of the Plaintiff pursuant to agreement of counsel, witness appearing pursuant to subpoena, counsel for both parties being present. This is taken for the purpose of discovery, and all other purposes as provided by law. Filing, notice of filing, and all other formalities of law are waived. All objections except those relating to the form of the question will be reserved until the time of trial or until the time of the use of the deposition.

APPEARANCES:

For Plaintiff:

Mr. E. Freeman Leverett

For Defendant:

Mr. Woodrow W. Lavender
Mr. Fred Cunningham

CLEVELAND SIMPSON

being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LEVERETT:

Q Your name is Cleveland Simpson?
A That is right.

Q What is your full name?
A That is all of it.
Q Where do you live?
A 136 Burch Street.
Q How long have you lived in Elbert County?
A All of my life.
Q Burch Street is in Elberton, Georgia?
A Yes sir.
Q How old are you?
A Forty eight.
Q For the record, you are a member of the negro race?
A Yes sir.
Q What is your employment?
A I work in a granit shed.
Q Which one?
A Service Granite.
Q In what capacity?
A Run a wire saw.
Q How much education do you have?
A Third grade.
Q Have you done manual labor all of your life?
A Yes sir.
Q You are the father of Johnny Cleveland Simpson who was killed in Vietnam in active duty on or about September 19, 1968?
A That is right.
Q How old was your son at the time of his death?
A Twenty or twenty one.
Q What had been his occupation before he went into the army?
A He worked there at the silk mill.
Q How long did he work there?
A I don't know, about two years, I guess.
Q What did he do at the silk mill?
A I don't know.
Q Did he do manual labor?
A Yes sir.
Q How much education did he have?
A He went through the 9th or 10th.
Q Was Johnny ever married?
A Not as I know of.

Q Did he have any children?
A They say that he has got a little boy.
Q Is that Lorenzo Willis?
A Yes sir.
Q Did he ever tell you that this was his son?
A He said that it was his. I know that he paid the doctor's bills.
Q Did you pay any of the hospital bill?
A Yes sir, I gave her some money to pay the hospital bill.
Q Did you pay it yourself or did you give it to Janice?
A I sent it down thereby James Reed to Janice.
Q Did Johnny write you while he was in the service?
A Yes sir.
Q Did he say anything in any of his letters about the child?
A No sir, not as I know of.
Q Did you go over to the doctor's office with Johnny in connection with seeing the doctor about paying for the cost of the delivery and the lying in charges?
A No sir, I didn't go with him over there.
Q When did Johnny go into the service, do you remember?
A No sir, I sure don't.
Q Was it before the child was born?
A Yes sir.
Q How long before?
A It wasn't too long.
Q How many times did he come home after he went into the service?
A One time.
Q Do you know whether or not he went and saw the baby when he came home?
A I imagine, yes sir, I know that he did.
Q Did he ever bring the baby home with him that time? Did he ever bring it to your house?
A To tell you the truth, I don't know, because my daughter used to go over there and get the baby and bring him over there. Now, he has been over there several times. I don't know if Johnny brought him over there or not.

Q After your son got killed, you did try to help Janice and her mother, Willie Wilbon, get some veterans benefits for the child?

A I told them just what I knowed about it.

Q Well, did you try to help them get some benefits?

A They asked me what Bob Heard asked me. I told them as far as the truth as I could.

Q Did you go over to the veterans office and talk to Mrs. Loyd?

A Yes sir.

Q But later on, you did collect the $10,000 G. I. Insurance, they call it, yourself?

A Yes sir.

Q Before Johnny went into the service, had he been going with Janice Willis, dating her?

A I reckon. You know, I don't know nothing about what those young folks were doing, but I believed that he was going with her, but I didn't ever see him going with her.

Q When Johnny came home from the service, and saw the child, did he say anything to you whether or not he was the father of it?

A No sir, we didn't discuss nothing like that. He was sort of bashful like. He never did say nothing to me about it. But, I believe he though that it was his.

Q Did he say that to you?

A No, he didn't say it to me, but the way that he was acting, he acted like he was satisfied over it.

CROSS EXAMINATION

BY MR. LAVENDER:

Q Where did you say that you lived, Cleveland?

A 136 Burch Street.

Q Are you married?

A Yes sir, I have been married, but me and my wife are separated.

Q Are you divorced?
A No sir.
Q Is Johnny the only child that you have got?
A No sir.
Q How many children have you got?
A I have got four. I had four, three boys and one girl.
Q Is this by your first wife?
A I had two by my first wife. I had a girl and boy by my first wife.
Q What is Johnny's mother's name?
A Josetta Simpson.
Q Did he have a brother or sister by the full blood?
A He had a sister.
Q What is her name?
A Patricia Lorraine.
Q Who is the mother of these other two children?
A Addie Bell.
Q Is she living with you now?
A No sir. We are separated.
Q Who is living with you now?
A I live by myself, me and my daughter.
Q Are all of these other children grown?
A No sir, the little boy is going to school.
Q Do you own your home?
A Yes sir.
Q Who did you buy it from?
A I built it.
Q Who did you buy the land from?
A I bought it from Mr. Glenn McGarity.
Q When did you build this house?
A About 14 or 15 years ago.
Q Did you borrow any money to build it?
A Yes sir.
Q Have you done paid for it?
A Yes sir, I have done paid for it.
Q You don't owe anybody anything on your house?
A No sir, not no more than taxes.
Q What value do you place on it? What do you think it is worth?
A I don't know. I would say about $3,000.
Q Would you take that for it?

A No sir, I would not take $10,000 for it.

Q Who filled out the application for you for this insurance?

A Who filled it out?

Q Yes. Did you fill out an application form to send to the insurance department, the G.I. insurance?

A Not as I know of.

Q How did you come by the money then? Did they just send it to you?

A They sent Janice a letter did she have any proof at all, could she send any kind of statement at all that Johnny was the father of the baby, any kind of letter or anything, and they give her so long to get it, and they were going to pay to me. They give Janice, I don't know how long it was that they give her. Anyhow, when the time was up; Janice brought me the letter over there and asked me did I have any proof that Johnny wrote and said that it was his baby. I told her no, and so she couldn't prove it, then after that the insurance was paid to me.

Q Janice did bring you a letter that she got from them?

A Yes sir. they wanted some proof, a letter or anything.

Q Did you read the letter?

A No sir. My daughter did.

Q And Janice asked you did she have any proof?

A Did I have any proof, could I prove it, and I told her, no, that I couldn't, didn't have no proof.

Q Are you referring to the letter that she got on the 1st of February?

A What do you mean?

Q This letter that you are talking about that she brought over there. Was that the one that Janice got along the 1st of February?

A I don't know when she got it or when she brought it over there. I know that when she brought it over there that time was out when she give it to me.

Q Time was already out when she brought it over there?

A Yes sir.

Q So, it would have been after the time specified in the letter that she came to see you?
A That is right.
Q What did she asked you when she got there?
A I didn't see Janice. Her mother brought it over there.
Q Janice didn't bring it?
A No sir.
Q Her mother brought it?
A Yes sir.
Q What is her mother's name?
A Yoncey is what I call her.
Q Do you know who her husband is?
A Joe Wilbon.
Q This was Joe Wilbon's wife who brought it to you?
A Yes sir.
Q And the mother of Janice?
A That is right.
Q Did she bring to you, did you talk to her?
A I am going to tell you the truth. I don't know whether or not I talked to her. Yes, she brought it over there and give it to me. I don't know whether I talked to her about it or not.
Q What did she asked you?
A She asked me if I had a letter or any proof, and I told her no.
Q What did you do after that?
A I didn't do nothing.
Q Well, how did you get the money?
A They mailed it to me.
Q Did anybody ever come to you? Did the Veterans Administration or anybody else ever come to you with a form to sign?
A Only what I was up there at Mrs. Veal's office. I signed a whole lot of papers up there, but some of them, I don't know what they was or what she explained to me. It has been so long.
Q Is that your signature? (Reporter marks Deft's Ex. 2)
A Yes sir, it is.
Q Where were you at the time that you signed this?

A I don't know.

Q Were you in the Veterans Service office?

A I don't know where I was. I know that is my signature.

Q Did they explain to you at that time that this was what you had to do in order to get the money?

A No.

Q You don't know who filled out this form for you?

A I know that Mrs. Veal filled it out is all that I know.

Q Now, I am not trying to confuse you, Cleveland. You had to do something. I want you to think now. You had to do something. They just didn't send you a check. You had to sign some papers and you had to make application for it.

A The papers that I made out, I made out in Mrs. Veal's office.

Q Did the Veterans' office call you and ask you to come up there? How did you get up to Mrs. Veal's office?

A Well, all of the papers I got, I always carried them to Mrs. Veal.

Q When you got any papers pertaining to this, you would go and consult with Mrs. Veal about it?

A That is right. She would tend to all of them.

Q If there were any papers that you had to fill out, she would fill them out?

A Yes sir.

Q Do you recall any discussion that you had with her about the insurance check?

A No more than she asked me, it wouldn't be paid until they could prove that, you know, prove whether it was Johnny's child or not, did we have any letters or any kind of proof, and asked Janice did she have a letter that Johnny wrote her and Johnny saying that it was his child. She didn't have none and I didn't have none.

Q And you told her that you didn't have any?

A I didn't have any.

Q Janice didn't have any?

A She didn't have none.

Q And she filled out these forms?

A I reckon she did. I talked with Mr. Bob Heard one day. That could have been the one that he had me sign. I don't know.

Q Now, you talked to Mr. Bob Heard before you made application for the insurance?

A No sir, that was after that.

Q You didn't talk to Mr. Heard until after you got the money?

A Yes sir, he had me to come up to his office.

Q Did you talk to him anytime before then about it?

A No sir.

Q The only conversations that you had with anybody about the money was over at the Veterans office, at Mrs. Veal's office?

A At the veterans office.

Q This is your signature?

A That is my signature.

Q And the veterans office is the only place that you signed any papers?

A The only place I remember signing any papers is the veterans office.

Q How long was it after you signed this paper and sent it off before you got the money?

A I really don't know.

Q Do you remember when Janice's mother came over to your house with this letter that she had?

A Yes sir.

Q Had you already been up to the veterans office and talked with Mrs. Veal before then?

A I had been up there so many times, I couldn't say exactly. I had been up there many times.

Q Many times before she came over there?

A Yes sir, many times.

Q Do you know how many times you went up there after Janice's mother was over there? From the time that Janice's mother came over there, and the time you got the money, how many times did you go up to the veterans office?

A I don't know. Everytime that I got some papers, I carried them up there. I don't know how many times that I went up there.

Q You don't know who paid the doctor's bill, do you?
A No sir, I really don't know, I give her some on her hospital bill.
Q Why did you pay on the hospital bill?
A Because the child was in the hospital and she could not get out, and she kept sending up to the job for me to give her some money to help her get out, and I was working, and so I got paid off that Friday at dinner, and I cashed my check, and I gave James Reed, I think it was fifty or something dollars, to carry down there and give to her where she could get out of the hospital.
Q Who did you give it to?
A James Reed.
Q Who is James Reed?
A That is a boy who worked out there with me. He could get off. I had to work until the dinner hour.
Q Would it surprise you if I told you that Service Granite Company paid $23.50 on October 7, 1967 on this bill?
A Why did they have to pay that?
Q I guess they took it out of your pay. You were working there. Did you know about this $23.50 paid by Service Granite Company?
A For Janice?
Q Yes.
A How did they have to pay it?
Q I don't know. They did.
A I didn't sign her in the hospital and I didn't sign her out, and I know good and well that I didn't have to pay it, for Janice. It may have been for some other bill.
Q Would it surprise you to know as of September 3, 1969, only twenty seven other dollars had been paid on her bill?
A Only twenty seven other dollars?
Q Yes. So, you gave fifty dollars to somebody to pay on the bill and it wasn't paid.
A I sent it up there by James Reed.
Q You sent it down there by James just to help her out, because they kept sort of bothering you about it, she couldn't get out?

A That is right. I felt sorry for the child, and I sent the money down there by James Reed.

Q Were you doing it to help Janice or were you doing it to help your grandson?

A If it was my grandson, I was doing it to help both of them.

Q Did you know it was your grandson?

A Now, I didn't know it now. You need not ask me that. She didn't get the money?

Q I don't know who got it. The records show that on October 2, 1967, Service Granite Company paid $23.50.

A On Janice's bill?

Q Yes. And then at a subsequent date, somebody paid $27.00. Their records don't show who paid it.

A Somebody?

Q Yes. The rest of it was still unpaid as of September 3 of this year.

A She didn't get the $50.00?

Q I don't know whether she got it or not. I am telling you what the records show at the hospital.

A Well, she didn't pay the $50 there when she got out. James pulled my leg.

Q What did you do with the money when you got it?

A I put it up.

Q Where did you put it?

A In the bank.

Q Which bank?

A The First National.

Q Did you put it in a savings account or a checking account?

A I put some in a savings account and some in a checking account.

Q Did you owe anything on your house at that time?

A No sir.

Q You haven't owed anything on your home in a long time?

A No sir, I paid for it.

Q So, you didn't pay any of this money on payment of your house?

A No sir.

Q How much of it did you put in savings?

A I put $5,000.
Q Do you still have it there?
A No sir.
Q What did you do with that?
A I lived off of it.
Q How much did you put in the checking account?
A I believe it was $2,000.
Q You put $2,000 in a checking account and $5,000 in a savings account, and what did you do with the other $3,000?
A I spent it.
Q Have you got any of the money now?
A I have got a little.
Q Where is this money?
A In the First National Bank.
Q Is it in savings or checking account?
A A checking account.
Q Do you have any income now?
A No more than what I get from V. A.
Q How much do you get from V. A.?
A Eighty Seven dollars a month.
Q Is this for service connected disability?
A Yes sir.
Q Do you draw any social security?
A No sir, I hadn't been long put in for it.
Q You have applied for social security?
A Yes sir.
Q But it has not yet been approved?
A No sir.
Q When you applied for this insurance money, who were you applying for?
A When I applied?
Q Yes. Were you applying for your own use and benefit or somebody else's?
A I reckon I was applying for my own benefit, I reckon.

REDIRECT EXAMINATION

BY MR. LEVERETT:

Q Cleveland, were you and Addie Bell married?
A Yes.

Q Do you have any children by anyone that you were not married to?

A They say I is. You asked for the truth. I got some by Rosella Baker. I got two.

Q Did you have any by anybody else?

A No sir, not as I know of.

Q Did your son, Johnny, write your daughter while he was in the service?

A Yes sir, he wrote her every week.

Q Didn't he ask her in some of those letters about this baby?

A She read the letters. I couldn't read. She read the letters and she would just tell me that she got a letter from Johnny.

Q Didn't you tell Judge Heard when you were down there talking to him back in April of 1969 that he did write your daughter, and said something about it and asked about the baby, how the baby was getting along?

A Probably I did say it.

Q And Judge Heard asked you to find those letters, and bring them back to him, didn't he?

A Yes sir.

Q Did you try to find them?

A I tried to find them, but couldn't find them.

Q This exhibit here, Defendant's Exhibit 2, you identified this as being your signature right here?

A That is right.

Q It has got over here, dated 12-2-68, which would be December 2, 1968. Is that the date that you went by there to sign that before Christmas?

A I don't know what date it was. I know that I went over ther.

Q You just aren't certain, in other words?

A No, to tell you the truth, I don't remember the date. That is all that I can go by. I know that I went over there.

Q When Willie Wilbon brought this paper to you, didn't she ask you to help her try to get some money for Janice for the child?

A Now, Janice, she ain't asked me nothing.

Q No, I am talking about Janice's mother, Willie, the one that you call Yoncey?

A Yoncey, she ain't asked me nothing about helping her.

Q Didn't she bring this letter to you and asked you if you could help her get up some information?

A Yes sir.

Q At that time though, you had already applied for the money for yourself?

A I reckon I had. All those papers, I don't know what I signed up there. That is the truth. You are asking me the truth.

DEPOSITION CONCLUDED

[Certificate (Omitted in Printing)]

DEFENDANT'S EXHIBIT 9

SEE INSTRUCTIONS ON REVERSE SIDE OF FORM

CLAIM FOR DEATH BENEFITS

(Serviceman's Group Life Insurance)

RETURN COMPLETED FORM TO:
OFFICE OF SERVICEMEN'S GROUP LIFE INSURANCE
212 - Washington Street
Newark, New Jersey 07102

1. LAST NAME - FIRST NAME - MIDDLE NAME - JR., SR., II, III	2. SERVICE NUMBER	3. WAS INSURED'S SERVICEMEN'S GROUP LIFE INSURANCE TO AN INDIVIDUAL POLICY?
SIMPSON, JOHNNY CLEVELAND	US 67 075 805	☐ YES ☒ NO (If "Yes," complete 4A and 4B)
4A. NAME OF ASSIGNEE (If Any)		4B. AMOUNT CONVERTED $

PART I - INFORMATION CONCERNING CLAIMANT

5. YOUR NAME (First, Middle)	6. RELATIONSHIP TO DECEASED	7. YOUR DATE OF BIRTH (Month, day, year)
MR. Cleveland Simpson	father	April 2, 1922

NOTE - Complete Items 8 through 12C if you are the widow or widower of deceased.

8. DATE OF MARRIAGE (Mo., day, yr.)	9. PLACE OF MARRIAGE (City and State)	10. DID MARRIAGE CONTINUE UNTIL DATE OF DEATH?
		☐ YES ☐ NO

11A. DID DECEASED HAVE ANY PREVIOUS MARRIAGES?	11B. MARRIAGE TERMINATED BY:	11C. DATE MARRIAGE TERMINATED
☐ YES ☐ NO (If "Yes," complete 11B and 11C)	☐ DEATH ☐ DIVORCE	

12A. DID YOU HAVE ANY PREVIOUS MARRIAGES?	12B. MARRIAGE TERMINATED BY:	12C. DATE MARRIAGE TERMINATED
☐ YES ☐ NO (If "Yes," complete 12B and 12C)	☐ DEATH ☐ DIVORCE	

NOTE - Complete PARTS II and III ONLY if you are NOT the designated beneficiary, widow or widower of the deceased.

PART II - INFORMATION CONCERNING NEXT-OF-KIN OF DECEASED

List below the name, age, relationship, and address of. (Check appropriate places below)

(a) Widow or widower: ☒ None

If none, was insured ever married? ☐ Yes ☒ No If yes, did marriage terminate by ☐ Death or ☐ Divorce If yes, give Date_____

(b) If there is no surviving widow or widower, list the child or children of all the deceased's marriages (including adopted child or illegitimate child, stating which class it is) or the descendants of deceased child or children. If none, check here ☐ None

(c) If there are no children, list the surviving parent or parents. If father deceased ☐ If mother deceased ☐

(d) If there are no survivors within the degrees indicated in (b) through (c), list below the next of kin who may be capable of inheriting from the deceased (brothers, sisters, descendants of deceased brothers, sisters, etc.).

13A. NAME	13B. AGE	13C. RELATIONSHIP TO DECEASED	13D. ADDRESS
Lorenca Willis	6-20-67	illegitimate child	Janice Willis 357 Campbell St. Elberton, Georgia 30635

NOTE - Complete Items 14 and 15 ONLY if any of the persons listed above are under

14. NAME AND ADDRESS OF GUARDIAN FOR ANY MINOR CHILDREN LISTED ABOVE IF ONE HAS BEEN APPOINTED BY THE COURT (Attach copy of appointment papers issued by court)	15. IF A GUARDIAN HAS NOT BEEN APPOINTED, WILL ONE BE APPOINTED?
NONE	☐ YES ☐ NO NONE

D.L.M.

PART III - INFORMATION CONCERNING THE ESTATE OF THE DECEASED

16. NAME AND ADDRESS OF EXECUTOR OR ADMINISTRATOR, IF ANY, APPOINTED BY THE COURT TO SETTLE THE ESTATE OF THE DECEASED	17. IF AN EXECUTOR OR ADMINISTRATOR HAS NOT BEEN APPOINTED, WILL ONE BE APPOINTED?
NONE	☐ YES ☐ NO NONE

PART IV - CERTIFICATION BY CLAIMANT

I HEREBY CERTIFY that all statements made in this claim are true to the best of my knowledge, information, and belief, and that no evidence necessary to a settlement of this claim is suppressed or withheld. In the event the insured has not previously elected monthly installments, I request that the Death Benefit be paid in ☒ One Sum ☐ 36 Equal Monthly Installments.

18. SIGNATURE OF CLAIMANT (Do not print)	19. ADDRESS (Number and Street; City, State and Zip Code)	20. DATE
Cleveland Simpson	136 Burch Street Elberton, Georgia 30635	12-2-68

WARNING - Any intentional false statement in this claim or willful misrepresentation relative thereto is subject to punishment by a fine of not more than $10,000 or imprisonment of not more than 5 years, or both. (18 U.S.C. 1001)

VA FORM NOV 1968 29-0263 IF ADDITIONAL SPACE IS REQUIRED, ATTACH SEPARATE SIGNED SHEETS.

ELBERT SUPERIOR COURT STATE OF GEORGIA

Number 1081

LORENZO WILLIS, a minor, by Willie Wilbon, next friend,

vs.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a Corporation

ELBERTON, GEORGIA FEBRUARY 6, 1970
11:00 O'Clock A. M.

This is the deposition of WILLIE WILBON, a party in the case, taken pursuant to agreement of counsel, counsel for both parties being present. This is taken for the purposes of discovery, and all other purposes as provided by law. Filing, notice of filing, and all other formalities of law are waived. All objections except those relating to the form of the question will be reserved until the time of the trial or until the time of the use of the deposition.

APPEARANCES:

For Plaintiff:

Mr. E. Freeman Leverett

For Defendant:

Mr. Woodrow W. Lavender
Mr. Fred Cunningham

WILLIE WILBON

being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LEVERETT:

Q State your name.
A Willie Wilbon.
Q You are married to Joe Wilbon?

A Yes sir.
Q How old are you?
A Thirty four.
Q You are the mother of Janice Willis?
A Yes sir.
Q Who was her father?
A Lynwood Willis.
Q Were you and Lynwood married?
A No sir.
Q Do you have any other children?
A Yes sir, I have four by my husband.
Q Do you have any other children other than Janice who was by somebody other than your husband?
A No sir.
Q What do you do?
A I housework.
Q As a domestic servant, a maid?
A Just a maid.
Q Have you done that sort of work all of your life?
A Yes sir, mostly. I used to work at the Samuel Elbert Hotel.
Q What education do you have?
A I didn't go to school too much.
Q About how far did you go, the 2nd, 3rd, 4th?
A About the 7th or 8th grade.
Q How much education did Janice's father have, or do you know?
A. I don't think that he went to school too much, too far in grades either, because then children couldn't go to school like they can now. We had so far to walk that we couldn't go.
Q Were you born and raised in Elbert County?
A Yes sir.
Q Did you ever live anywhere else?
A No sir.
Q Where was Janice born and raised?
A Elbert County.
Q Where did she live?
A She has lived with me all of her life mostly. She goes to stay with her daddy sometimes.
Q How long does she stay with him at the time?

A She stays a month or two months or two or three weeks sometimes. But she stays with me all time.
Q How old is Janice now?
A Seventeen.
Q Does Janice have any children?
A Just one, one little boy.
Q What is his name?
A Lorenzo Willis.
Q Did you know a boy by the name of Johnny Cleveland Simpson?
A Yes sir, I did.
Q Did your daughter ever date him?
A Yes sir.
Q Did she ever date anybody else?
A No sir.
Q When did she start dating him?
A She was about 18 years old.
Q How long did she date him?
A She dated him when he went in the army. She was still dating him when he was in the army.
Q When did he go in the army?
A He went in the army in May, I think.
Q Of which year?
A 1967.
Q When was the baby born?
A June 20.
Q Of what year?
A 1967.
Q Did you ever talk to Johnny about the baby?
A Yes sir, I sure have.
Q What did he say about it?
A He told me that he was going to marry as soon as he got out of the army, and he gave her an engagement ring, and he gave me money to buy the baby clothes before he left and then he gave me money to carry her to the doctor and be examined, and he told me that that was his baby, and he was willing to marry her.
Q And he was willing to marry her?
A Yes sir, but Janice didn't want to marry him until he got out of service.

Q I hand you an exhibit that is marked Plaintiff's Exhibit 1 to the deposition of Janice Willis, and I ask you if you recognize that signature right there?

A Yes.

Q Were you present when that was signed?

A Yes.

Q Would you state how Johnny came to sign that document there?

A Yes sir, he come up there, I don't know what date it was, but he come up there and signed it. I was up there that day that he come and signed it, because Mrs. Martha Ann Harper carried me up there, and he met me up there to sign it.

Q Up where?

A Up to Dr. Campbell's office.

Q Why did he have to go up and sign that?

A Because Dr. Campbell told he had to come sign that he was the daddy of the baby. He said that he would sign it, and he signed it.

Q After Johnny went in the service, did he come home any?

A Yes sir, he came home once.

Q Did you see him?

A Yes sir, he come up there just about every night, just about.

Q Did he see the baby while he was there?

A Yes sir, he saw the baby.

Q Did he take the baby with him on any occasions?

A Yes sir, his sister come and got the baby and he kept him over there to his house over there one day.

Q Does his sister come to see the baby now?

A Yes sir, she comes to see him. She bought him things for Christmas.

Q Which Christmas was that?

A Christmas now.

Q After Johnny got killed in Vietnam, did you ever talk to Johnny's daddy about helping you get the G.I. insurance money?

A Yes sir.

Q When did you talk to him?

A I talked to him one evening. I don't know when it was. Anyway, I carried the papers over there to him. The lady told me to take them over there to him, and tell him to come up there and get the papers and bring them, and he told he he was coming over there the next morning, and get Janice and take her up there, but he never did come. So, I never did get the papers back. He just tore them up, I guess.

Q Did you know that he had applied for the insurance money himself when you took those papers to him?

A No sir.

Q Did you later find out that he had already gotten the insurance money?

A No sir, I sure didn't.

CROSS EXAMINATION

BY MR. LAVENDER:

Q When did you learn that Janice was pregnant?

A She was still in school, and when I learned that she was pregnant, she didn't want to go to school. She got to staying out.

Q She got to saying out of school?

A Yes sir.

Q Did you question her about why she was staying out of school?

A Yes sir.

Q What did she tell you?

A She didn't come out and tell me, but I most knowed what was wrong with her. I asked her was she expecting, and she wouldn't tell me, but I knowed she was, because she had never laid out of school, because she loved school.

Q She wouldn't tell you. Did she ever tell you?

A No sir.

Q How did you find it out?

A I just looked at her and knew and she stayed vomiting all of the time.

Q You could tell by the way that she was developing that she probably was pregnant?

A Yes sir.

Q Did you take her to the doctor?
A Yes sir, I took her to the doctor, because I sent for Johnny and he come. I told him about Janice, and he—
Q Wait just a minute now. Janice starting dropping out of school?
A Yes sir.
Q You looked at her physically and her symptoms and you figured that she was pregnant?
A Yes sir.
Q Did you take her to the doctor?
A Yes sir, I took her to the doctor.
Q What did the doctor tell you?
A He told me that she was pregnant.
Q Then, did you talk to Janice about it?
A Yes sir.
Q Were you in the presence of the doctor or did you wait until you got home?
A When we got home, and then I talked to the doctor about it, too.
Q When you got home, what did you say to Janice?
A I just asked her was she pregnant and you know a child ain't going to do nothing but cry when you asked them something like that. After I found out that she was pregnant, I sent for Johnny.
Q Did you ask her if she knew who the father was?
A Yes sir.
Q What did she tell you?
A She said that Johnny was the father, and he said that he was, too.
Q She said that Johnny was the father?
A Yes sir.
Q Then, you sent for Johnny?
A Yes sir, and he come, and I asked him, and he didn't deny it.
Q Was this the same day that you went down to see the doctor?
A It was before. He come and he told me that anything that he could do for it.
Q What did he tell you?
A He told me that he was the daddy of the baby, and so he give me the money to carry her to the doctor.

Q He gave you the money to carry her to the doctor before you went down to see Dr. Campbell?
A Yes sir.
Q How much money did he give you?
A He give me $5.00.
Q You said that Janice started dating Johnny Cleveland when she was about 13?
A Yes sir, because when she got pregnant, she was 14.
Q Did she date him regularly?
A Yes sir.
Q How frequently?
A He come right regular.
Q What days of the week?
A He come through the week and on the weekends.
Q On the weekends and through the week?
A Yes sir.
Q How many times through the week, would he usually come?
A He come sometimes two and three nights a week.
Q Where would they go?
A Sometimes they would go down to my sister's. She had a daughter, so they used to go down there a lot.
Q Who used to go down there?
A Janice and Johnny.
Q Janice would go down there with him?
A Yes sir.
Q Where else, to your knowledge, would they go?
A That is about the most they would go down to my sister's.
Q Did they go to the beer joint?
A No sir, she don't fool around down there.
Q Did they go to the picture show?
A They would go to the picture show sometimes, but they don't go to the beer joint.
Q Did Johnny ever come down there when you were not at home?
A Yes.
Q Did he ever come when you were at home?
A Yes sir.
Q Where would you go and where would you stay at the time when he would come down there?

A I would be a work sometimes, and sometimes I would be at the house.

Q Would you sit in the room with them?

A No sir, they would be, she would be there in the room.

Q Do you know where these intimate and sex relations took place between Johnny and Janice?

A No sir, I don't know that.

Q Did they take place in your house?

A Yes sir, I guess that they did.

Q Did you know that it was taking place?

A No sir, I didn't know it at the time then.

Q Did you leave them alone a great deal of the time?

A Yes sir, sometimes I did.

Q Did you suspect that it was going on?

A I don't know.

Q That is what was going on about your age, wasn't it?

A Yes sir, I guess so.

Q And you figured that she was doing the same thing?

A Yes sir.

Q Did you approve of her doing this?

A Yes sir.

Q Did you ever put any pressure, did you ever have to threaten Johnny, did you ever threaten him with a warrant?

A No sir, never have, because he was willing to do everything that I asked him.

Q What did you ask him to do?

A I asked him was he going to pay the doctor's bill, and he told me that he would pay the doctor bill and everything, do all that he could.

Q What else did he say that he would pay besides the doctor bill?

A The hospital bill, but he wasn't here at the time, you know.

Q Did he pay any of those?

A He paid the doctor bill.

Q How much did he pay on the doctor bill?

A I don't know how much he paid on it. He may have paid it all, before he left, because he was paying on it by the week.

Q Did you pay any of the doctor bill?
A No sir.
Q Is the doctor bill fully paid now?
A I don't know, sir, I ain't checked on it. Dr. Campbell ain't never said anything to me about it. I don't know if it is paid or not.
Q Has Janice dated, is she dating any boys now?
A No sir.
Q What does she do?
A She don't do nothing but stay at home. She don't go nowhere.
Q Does she work?
A Yes sir, she works sometimes, but she don't go out nowhere. She had rather stay at home.

DEPOSITION CONCLUDED

[Certificate (Omitted in Printing)]

IN THE SUPERIOR COURT OF ELBERT COUNTY
STATE OF GEORGIA

Civil Action No. 1081

LORENZO WILLIS, a minor, by Willie Wilbon, next friend,
PLAINTIFF

vs.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
a corporation, DEFENDANT

MOTION TO STRIKE AFFIDAVITS OF DANIEL F. HOBBS, JR.
AND ROBERT A. LEWIS

NOW COMES THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, named as defendant in the above-styled case, and makes and files this its motion to strike the affidavits of Daniel F. Hobbs, Jr., dated November 25, 1969, and Robert A. Lewis, dated January 15, 1970, both of which were filed by plaintiff in support of its Motion for Summary Judgment; and for grounds thereof shows:

(a) The said affidavits do not meet the requirements of Georgia Code Annotated § 81A-156(e);

(b) Said affidavits do not set forth such facts as would be admissible in evidence;

(c) Specifically, each of the aforesaid affidavits is replete with option testimony and hearsay and includes assumptions and conclusions for which there is no basis in fact; and, therefore, both are inadmissible.

WHEREFORE, this defendant prays that its motion to strike said affidavits (identified as Exhibit "A" and Exhibit "B" attached to plaintiff's Motion for Summary Judgment) be sustained.

This 17 day of April, 1970.

LAVENDER & CUNNINGHAM

/s/ Woodrow W. Lavender

11 Thomas Street
Elberton, Georgia 30635

KING & SPALDING

/s/ A. Felton Jenkins, Jr.

Attorneys for Defendant,
The Prudential Insurance
Company of America

2500 Trust Company of
Georgia Building
Atlanta, Georgia 30303
Telephone: (404) 577-5350

[Certificate of Service (Omitted in Printing)]

ELBERT SUPERIOR COURT

Civil Action No. 1081

LORENZO WILLIS, a minor, by Willie Wilbon, next friend,
PLAINTIFF

vs.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
DEFENDANT

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

The motions of plaintiff and defendant for summary judgment having come on for hearing pursuant to notice, counsel for both parties being present, and after giving consideration thereto and receiving in evidence in support of plaintiff's motion, the admissions in the pleadings, defendant's answers to plaintiff's interrogatories; the depositions of Janice Willis, Willie Wilbon and Cleveland Simpson, and taking judicial notice of the Vital Statistics Report attached to plaintiff's motion; and after receiving in evidence in support of defendant's motion the pleadings in the case, including plaintiff's complaint, defendant's answer, plaintiff's requests for admissions and defendant's responses thereto, and the deposition of Cleveland Simpson;

IT IS THEREFORE ORDERED AND ADJUDGED AS FOLLOWS:

(1) The motion of defendant to strike the affidavits of Daniel F. Hobbs, Jr., and Robert A. Lewis, attached to the motion of plaintiff for summary judgment, is hereby sustained.

(2) With respect to the two motions for summary judgment, the Court finds that there is no genuine issue as to any material fact, and that the only issue for decision is one of law.

Defendant contends that an issue of fact does exist which prevents the granting of summary judgment on behalf of plaintiff in that the issue of the paternity of

the plaintiff is in dispute. In support of this contention, defendant relies upon statements in the deposition of Cleveland Simpson, the father of the deceased serviceman. The Court finds that these statements do not create an issue of fact. At most, the witness expressed lack of written proof (Depos. p. 9) and advanced the observation that he did not "know it now" that the infant child, Lorenzo Willis, was his son's child (Depos. p. 16). The issue in the case is paternity, and not knowledge of the witness nor whether this witness can prove it one way or another by documents. The witness at nowhere disputed paternity on the part of his son, whereas the testimony of the mother, Janice Willis, stands uncontradicted to the effect that deceased was the father of the child. Therefore, the Court finds that there is no disputed issue of fact as to the identity of the father of the minor child, and that the uncontradicted evidence establishes that the deceased veteran was the father of the minor plaintiff, Lorenzo Willis.

(3) The only issue remaining for decision is consequently one of law, and that is, whether an illegitimate child is such a "child" as referred to in the Servicemen's Group Life Insurance Act, PL 89-214, 38 USCA § 701 et seq. The insurance policy here having been issued pursuant to an Act of Congress, and the question for determination being the interpretation of the words "child or children" in 38 USCA, Section 770 (a) (Third), the question necessarily must be determined according to federal law rather than the law of Georgia. This Court has read very carefully the Decision in *Cooper* vs. *Melvin*, 223 Georgia 239 (1967), primarily relied upon by the defendant. From a careful reading of the case, it does not appear that counsel for either of the parties presented question as to whether or not the interpretation of the words "child or children" should be determined according to federal law rather than the law of Georgia. Since this point has been clearly raised in the case at bar, this Court is of the opinion that the case of *Cooper* vs. *Melvin*, supra, should be distinguished. This Court is bound by the Constitution of the United States and the decision of the United States Supreme Court interpreting same.

Constitution of the United States, Article 6, Section 2; Constitution of Georgia, § 2-8001.

The Court is, therefore, of the opinion that the Congressional intent implicit in the enactment of the Serviceman's Group Life Insurance Act, supra, as well as recent Decisions, *United States* vs. *Phillipine National Bank*, 292 F.2d 743 (C.A.D.C. 1961); *Metropolitan Life Ins. Co.* vs. *Thompson*, 368 F2d 791 (C.A. 3rd 1966), cert. denied 388 U.S. 914; *Metropolitan Life Ins. Co.* vs. *Buckley, et al*, 278 F. Supp. 334 (D.C. Miss. 1967); *Levy* vs. *Louisiana*, 391 U.S. 68 (1968), require the holding that the words "child or children" in 38 USCA 770 include illegitimate as well as legitimate children. A contrary interpretation of the federal statute would raise serious constitutional questions of discrimination and arbitrary classifications under the Fifth Amendment. *Levy* vs. *Louisiana*, supra.

Therefore, the motion for summary judgment of defendant is denied, and the motion for summary judgment of plaintiff is hereby granted. Counsel for plaintiff will submit an appropriate judgment.

This 14th day of July, 1970.

/s/ [Illegible]
Judge, Superior Courts
Northern Judicial Circuit

[Filed in Office This 14 day of July, 1970,
/s/ C. H. Rucker, Clerk Superior Court]

ELBERT SUPERIOR COURT

Civil Action No. 1081

LORENZO WILLIS, a minor, by Willie Wilbon, next friend,
PLAINTIFF

vs.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
DEFENDANT

JUDGMENT

Order having been entered on July 14, 1970, denying defendant's motion for summary judgment, and granting plaintiff's motion for summary judgment;

It is therefore ordered, that plaintiff, Lorenzo Willis, a minor, by Willie Wilbon as next friend, do have and recover of defendant, The Prudential Insurance Company of America, the sum of Ten Thousand and no/100 ($10,000.00) Dollars principal, together with interest thereon at the rate of seven (7%) per centum per annum from July 30, 1969, plus court costs in the amount of sixty-seven and 50/100 ($67.50) dollars.

This July 16, 1970.

/s/ [Illegible]
Judge, Elbert Superior Court

[Filed in Office This 17 day of July, 1970
/s/ C. H. Rucker, Clerk Superior Court]

IN THE SUPERIOR COURT OF ELBERT COUNTY
STATE OF GEORGIA

Civil Action No. 1081

LORENZO WILLIS, a minor, by Willie Wilbon, next friend,
PLAINTIFF

vs.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
DEFENDANT

CERTIFICATE OF APPEALABILITY OF ORDER
DENYING SUMMARY JUDGMENT

Motion for summary judgment having been made by defendant, The Prudential Insurance Company of America, in the above-styled action, and order for same having been denied on July 14, 1970, now, and within ten days of the denial of such order, I hereby certify that such denial is of such importance to the case that immediate review should be had, and that direct appeal in such matter is proper.

This 22 day of July, 1970.

/s/ [Illegible]
Judge, Elbert Superior Court,
State of Georgia

[Certificate of Service (Omitted in Printing)]

Hall, P. J.
Deen and Evans, JJ.

IN THE COURT OF APPEALS OF GEORGIA

45781. Ev-90

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

v.

LORENZO WILLIS, a minor, by n/f, etc.

Since the Federal law and decisions of the Supreme Court of the United States are controlling in determination of the meaning of "child or children" in the beneficiary clause of the Servicemen's Group Life Insurance Act (79 Statute 883, 38 U.S.C.A. § 770) this phrase includes an illegitimate child of the deceased serviceman here.

As all the evidence shows the plaintiff in this case to be the illegitimate child of the deceased serviceman, the lower court did not err in granting summary judgment in favor of the plaintiff and denying the motion for summary judgment of the defendant insurance company.

Lorenzo Willis, a minor, by next friend, Willie Wilbon, as plaintiff, the appellee herein, filed his complaint against The Prudential Insurance Company of America, as defendant, now the appellant, seeking to recover the sum of $10,000 as proceeds of Prudential's Group Policy G-32,000 issued by Prudential through the Servicemen's Group Life Insurance program, authorized by Federal Law (38 U.S.C.A. § 701 et seq.). Willis alleges he is the illegitimate child of Johnny Cleveland Simpson, deceased, a serviceman killed in Vietnam. Based upon the pleadings, admissions, depositions, and other evidence in the record, Willis filed a motion for summary judgment, and Prudential filed a cross motion for the same. After a hearing, the court granted summary judgment in favor of Willis and denied summary judgment as to Prudential. The appeal is from this final judgment, and also from the denial of summary judgment in favor of Pru-

dential, with a Certificate of Appealability thereof signed by the trial judge.

The Federal law referred to above provides for insurance for members of the armed forces while on active duty. The putative father of the plaintiff died while on active duty, serving with the United States Army. He was not married, and was survived by a father. The deceased made no designation as to specific beneficiaries, but requested payment be made under the beneficiary provisions of the Servicemen's Group Life Insurance Act which provided that the benefits under the policy shall be paid in the order of precedence as follows:

1. Widow or widower;
2. Child or children; and
3. Parents of such member or the survivor of them, and then to the duly appointed executor or administrator, and if none, to other next of kin under the laws of domicile of such member.

The mother of the illegitimate made application for the proceeds but was advised to produce other evidence. She failed to do so and upon demand of the insured's father, Prudential paid the proceeds to him.

Janie Willis, the mother of the child, testified by deposition without contradiction that she was 17 years of age; that she started dating deceased when she was 12 or 13 years of age and never dated any other person or had sex relations with any other person other than the deceased; that the deceased gave her an engagement ring; that she had intercourse with deceased many times; that when she told deceased that she was pregnant, he asked whether she wished to get married; that deceased arranged for the doctor and lying-in costs, and paid the bills; that she didn't name the baby after deceased because she understood that she couldn't do this unless they were married; that deceased's sister named the child; that deceased's father signed for the hospital bill; that deceased was the father of the child; that upon returning home on leave from the Army, deceased came by and carried the baby home with him; the deceased acknowledged the baby as his own and agreed to keep it up; that

deceased wrote and asked her about the baby but she had lost the letters. A statement signed by deceased agreeing to pay the doctor's bill for the baby was identified and placed in evidence. The mother of the child is receiving Social Security and Veterans Administration benefits for the child as a child of the deceased veteran.

Cleveland Simpson, father of deceased, testified that deceased told him that the child was his (deceased's) and that the witness had paid the hospital bill; that his daughter (sister of deceased) brought the baby home with her several times and the deceased acted like he was the father.

Based upon the above, Willis contends that there is no disputed issue of fact that he is the child of the deceased. However, Prudential contends that the evidence is conflicting on whether he is or is not, but further contends that even so, the Georgia law is controlling as to the meaning of the term "child or children" under the Servicemen's Group Life Insurance Act, and since an illegitimate child does not possess the legal status of a "child" under Georgia law, Willis is not a recognized beneficiary under the insurance policy. Prudential thus contends the trial court erred as a matter of law in denying its cross motion for sumary judgment and in granting Willis' motion for summary judgment.

EVANS, Judge. 1. Counsel for the defendant contends that the Georgia law is controlling as to the meaning of the term "child or children" in the beneficiary clause of the Servicemen's Group Life Insurance Act (79 Statute 883, 38 U.S.C.A. § 770). Indeed, the ruling in Cooper v. Melvin, 223 Ga. 239 (154 SE2d 373) supports the contention as to the meaning of the term "child or children" for in that case the Supreme Court held that the term would not cover illegitimate children. The ruling in that case is as follows:

> "The word 'children' on the printed form of the group insurance policy under consideration in the present case, insuring the putative father of illegitimate children, can not be construed to mean illegitimate

> children who have not been legitimated by their father."

While that case involved a group insurance policy covering United States Civil Service employees pursuant to the Federal Employees Group Insurance Act of 1954, which appears to be a Federal law similar to that involved in this case, yet no discussion was made in that case as to the meaning of the Federal statutes. Hence, we must look to the purpose of the Federal statute here and determine whether the Congress intended the same to be interpreted by Federal law or by the law of the domicile of the various servicemen involved. We do not believe that the Congress intended that the various 50-odd State jurisdictions would interpret this law so as to have different results in different states. Undeniably, the Melvin case, supra, applied the Georgia law, and if the Georgia law controls, we need go no further than to reverse the trial court in granting the summary judgment for the plaintiff and denying it as to the defendant.

However, we have here numerous Federal decisions involving the National Service Life Insurance Act and the War Risk Insurance Act of World War I, the predecessors of the present law under consideration. In Davenport v. Servicemen's Group Life Insurance, 119 Ga. App. 685 (168 SE2d 621), this court stated at page 689:

> "War risk insurance was made available to those in active military service for the greater protection of themselves and their dependents."

And at page 691:

> "Just as the courts, in deciding change of beneficiary questions under the National Service Life Insurance Act, looked to decisions under the War Risk Insurance Act of World War I, the principles laid down in the decisions dealing with the former Act are pertinent and applicable to cases arising under the Servicemen's Group Life Insurance Act because of the substantial identity of the two Acts in regard to the requirements for change of beneficiary."

Therefore, Federal cases dealing with these two types of insurance should be considered by this court in rendering a decision here. While it is true the Servicemen's Group Life Insurance Act required free enterprise activity of various insurance companies throughout the 50 states, nevertheless, these insurance officials are required and controlled by this law which, even though not administered by agencies of the Federal government, the results are the same in its administration by private companies.

Therefore, we think the question should be decided by application of the Federal Law. Attention is here called to the ruling in United States v. Standard Oil Company of California, 332 U.S. 301, 305, —— SC ——, 91 L. Ed. 2067:

> "Perhaps no relation between the Government and a citizen is more distinctively federal in character than that between it and members of its armed forces. *To whatever extent state law may apply to govern the relations between soldiers or others in the armed forces and persons outside them or nonfederal governmental agencies, the scope, nature, legal incidents and consequences of the relation between persons in service and the Government are fundamentally derived from federal sources and governed by federal authority.* See Tarble's Case (United States v. Tarble) 13 Wall (US) 397, 20 L ed 597; Kurtz v. Moffitt, 115 US 487, 29 L ed 458, 6 S Ct 148." (emphasis added).

And as stated in Calhoun Gold Mining Co. v. Ajax Gold Mining Co., 182 U.S. 499, 505, —— SC ——, 45 L Ed. 1200:

> "The statute construed is a Federal one, being a law, not only for Colorado but for all the mining States, and, therefore, a rule for all, and not a rule for one, must be declared."

We point out that in United States v. Oregon, 336 U.S. 643, 648-9, —— SC ——, 6 L. Ed. 2d 575, the Supreme Court of the United States has held that the supremacy of Congress over veterans' affairs, even as against the

property laws of a state, is well settled. We believe the ruling in Wissner v. Wissner, 338 U.S. 655 (2), —— SC ——, 94 L. Ed. 424, is controlling here. This case involved a policy of insurance issued pursuant to the National Service Life Insurance Act of 1940. The court ruled as follows at page 658:

> "The National Service Life Insurance Act is the congressional mode of affording a uniform and comprehensive system of life insurance for members and veterans of the armed forces of the United States. A liberal policy toward the serviceman and his named beneficiary is everywhere evident in the comprehensive statutory plan."

See also Woodward v. United States, 341 U.S. 112, —— SC ——, 95 L. Ed. 806, wherein the Supreme Court resolved the issue as beneficiary solely as a federal question without regard to state law whatever, and held that an adopted brother could take.

Therefore, construing the federal statute according to the federal law would require a holding that "child or children" would include an illegitimate child or children. Metropolitan Life Ins. Co. v. Thompson, 368 F. 2d 791, cert. denied 388 U.S. 914, —— SC ——, —— L. Ed. ——; Metropolitan Life Insurance Co. v. Buckley, 278 F. Supp. 334.

In United States v. Philippine National Bank, 292 F. 2d 743 at page 744, we find the following:

> "The provision for gratuitous insurance was generous legislation, plainly adopted for humane and patriotic reasons."

It was also pointed out in this case at page 745 that the Supreme Court said of the National Service Life Insurance Act:

> "The statutory provisions, where ambiguous, are to be construed liberally to effectuate the beneficial purposes that Congress had in mind."

Clearfield Trust Co. v. U.S., 318 U.S. 363, 63 SC 573, 87 L. Ed. 838; United States v. Zazove, 334 U.S. 602, 68 SC

1284, 92 L. Ed. 1601; DeSylva v. Ballentine, 351 U.S. 570, 76 SC 974, 100 L. Ed. 1415; see also Boyd v. Thayer, 143 U.S. 135, —— SC ——, —— L. Ed. ——; United States v. Oregon, 366 U.S. 643, 81 SC 1278, 7 L.Ed. 2d 575; Levy v. Louisiana, 391 U.S. 68, 88 SC 1509, 20 L. Ed. 2d 436. We do not believe that Congress intended an administration on this law varying from state to state. The legislative history of the law indicates that the purpose of the same was geared to assuring support for dependents rather than passing on accumulated wealth to relatives according to local laws of inheritance as has been ruled by our Georgia courts.

Thus, in Cooper v. Melvin, supra, no question was made and none was decided as to whether the applicable Federal law or State law would control. Therefore the State law was applied. This case is not authority for holding that the State law must be applied in a case such as the one sub judice. To the contrary, we have cited herein various decisions by the United States Supreme Court which clearly and unequivocally show that the Federal law must be applied in cases where rights arise under Federal statutes, and affect every state in the union. The Supreme Court of Georgia has long ago positively and correctly pronounced the principle that the Georgia Appellate Courts are not bound by Federal decisions, *except those of the United States Supreme Court.* See Thornton v. Lane, 11 Ga. 459-460 (4), and at 500; Thompson v. Eastern Air Lines, 200 Ga. 216, at 222 (39 SE2d 225). And in Central of Ga. v. Brotherhood of Railway Trainmen, 211 Ga. 263 (1) (85 SE2d 413), the Supreme Court of Georgia held:

> "The Railway Labor Act being a Federal statute, decisions of the United States Supreme Court construing and applying it are binding upon this court. Georgia Railroad v. Cubbedge, Hazelhurst & Co., 75 Ga. 321; Morris Plan Bank of Georgia v. Simmons, 201 Ga. 157, 164 (39 SE2d 166)."

We therefore follow the decisions by the United States Supreme Court in arriving at the conclusion that illegitimate children are included within the term "children" in

a policy of insurance such as the one here under consideration.

2. The evidence submitted here that the plaintiff, Lorenzo Willis, is the illegitimate child of the deceased, Johnny Cleveland Simpson, is not disputed in any respect by any of the facts presented. The only testimony which could be contended which disputes this fact is by the father of the deceased who testifies that he does not know for certain that this is his son's child. Yet he also testified against his interest that the deceased told him that the child was the deceased's, that he had paid the hospital bills at the request of his son, and that the deceased acted like he was the father. It would serve no purpose whatsoever to send this case to trial since on summary judgment the opposing parties had opportunity to present all the evidence it had in order to refute the contentions of the party moving for summary judgment. It failed to do so. The court did not err in rendering judgment for Willis.

Judgment affirmed. Hall, P.J. and Deen, J. concur.

45731

COURT OF APPEALS
OF THE STATE OF GEORGIA

Atlanta, November 30, 1970

The Honorable Court of Appeals met pursuant to adjournment. The following judgment was rendered:

Prudential Ins. Co. of America v. Lorenzo Willis, by n/f.

This case came before this court on appeal from the Superior Court of Elbert County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. Hall, P. J., Deen and Evans, JJ., concur.

* * * *

IN THE SUPREME COURT OF GEORGIA

SUPREME COURT
No. ———

(Court of Appeals Case No. 45731)

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
APPLICANT FOR CERTIORARI

vs.

LORENZO WILLIS, a minor, by Willie Wilbon, next friend,
DEFENDANT IN CERTIORARI

APPLICATION FOR WRIT OF CERTIORARI

NOW COMES THE PRUDENTIAL INSURANCE COMPANY OF AMERICA [hereafter referred to as "Prudential"] and files this its application for a writ of certiorari in the above-stated case and for grounds thereof says:

1.

This case presents the issues of whether the term "child or children" in the beneficiary clause of the Servicemen's Group Life Insurance Act, 79 Stat. 883, 38 U.S.C. § 770, includes illegitimates and whether Georgia law is controlling as to the meaning of this term. Based on two unanimous decisions by this Court involving nearly identical factual situations, Prudential submits that the term "child or children" does not include illegitimates and that Georgia law is controlling in making this determination.

2.

The original decision and judgment of the Court of Appeals of Georgia in the case of *The Prudential Insurance Company of America, appellant-defendant* v. *Lorenzo Willis, a minor, by Willie Wilbon, next friend, appellee-plaintiff*, being Case No. 45731 in the Court of Appeals of Georgia, was decided, rendered and filed on November 30, 1970. Said judgment affirmed the judgment of the trial court which had granted a motion for summary

judgment filed by Lorenzo Willis and denied a cross-motion for summary judgment filed by Prudential.

3.

Subsequently and within ten (10) days of the rendition of the judgment of the Court of Appeals, Prudential filed a motion for rehearing in the Court of Appeals of Georgia. Said motion for rehearing embraced the same contentions that are made in this petition for a writ of certiorari, as more fully appears from a copy of said motion for rehearing which is contained in the record. The Court of Appeals denied said motion for rehearing without further opinion on December 18, 1970.

4.

Within ten (10) days after the filing of the judgment of the Court of Appeals denying said motion for rehearing, Prudential gave written notice to the Clerk of the Court of Appeals of Georgia of its intention to apply to the Supreme Court of Georgia for a writ of certiorari in said case. A copy of said notice is attached hereto as Exhibit "A" and by reference made a part hereof.

5.

This application is filed with the Clerk of this Court within thirty (30) days from the filing of the final decision and judgment on said motion for rehearing by the Court of Appeals of Georgia in this case.

6.

The entire record in this case in the Court of Appeals of Georgia, including a copy of the judgment and decision sought to be reversed, is being transmitted to the Clerk of this Court by the Clerk of the Court of Appeals of Georgia, and is by reference made a part hereof.

7.

This case is one wherein Lorenzo Willis [hereafter refered to as "Willis"], a minor, by Willie Wilbon, next

friend, filed suit against Prudential seeking to recover of Prudential the sum of Ten Thousand Dollars ($10,000.00) on the ground that he is the alleged illegitimate child of Johnny Cleveland Simpson, deceased, and that, as such, he is entitled to the proceeds of Prudential's Group Policy No. G-32000 issued by Prudential through and in accordance with the Servicemen's Group Life Insurance Act, 79 Stat. 880 *et seq.* (1965), 38 U.S.C.A. § 765 *et seq.*, which policy insured the life of Johnny Cleveland Simpson, a member of the Armed Services. Willis filed a motion for summary judgment and contended that an illegitimate has the status of a "child" under the aforesaid policy. Prudential filed a cross-motion for summary judgment and asserted that as a matter of law Willis was not entitled to the insurance proceeds because the term "child or children" in the Federal statute does not include illegitimates. Prudential had previously paid the policy benefits to the deceased serviceman's father, his next of kin.

The principal issue presented in the trial court and in the Court of Appeals and which is now presented to this Honorable Court is whether the term "child or children" in the Servicemen's Group Life Insurance Act, 79 Stat. 883 (1965), 38 U.S.C.A. § 770 includes illegitimates. Under this general issue is the more specific issue of whether Georgia law or Federal law is controlling as to the meaning of the term "child or children" in the Act. It is clear and counsel for Willis has conceded, as has the Court of Appeals, that if Georgia law is controlling, illegitimates are not included within the term "child or children."

8.

The decision and judgment of the Court of Appeals of Georgia herein complained of arises out of a situation, which is relatively simple:

(1) Prudential is an insurance company which insured the life of Johnny Cleveland Simpson, a serviceman, in the amount of Ten Thousand Dollars ($10,000.00) under its Group Policy No. G-32000 which was issued

in accordance with the Servicemen's Group Life Insurance Act [79 Stat. 880, *et seq.* (1965), 38 USCA § 765, *et seq.*] This Federal law provides for insurance for members of the Armed Forces while upon active duty.

(2) Johnny Cleveland Simpson died on September 19, 1968, while on active duty and serving in the United States Army (R. 5). At the time of his death, the insured was not married and was survived only by his father, Cleveland Simpson, of Elberton, Georgia (R. 79).

(3) The insured, Johnny Cleveland Simpson, elected for his insurance benefits to devolve by law, pursuant to 38 USCA § 770(a). He made no designation as to specific beneficiaries (R. 16). When no designation is made, the beneficiary provisions of the Servicemen's Group Life Insurance Act and the insurance policy provide that the benefit under the policy shall be paid to the person or persons surviving at the date of the insured's death in the following order of precedence: widow or widower, child or children, parents of such member or the survivor of them, executor or administrator, or other next of kin [79 Stat. 883 (1965), 38 USCA § 770].

Upon claim by the insured's father (Cleveland Simpson), Prudential paid the proceeds of the policy to him (R. 81, 87).

Willis alleges that he is the illegitimate child of the insured Johnny Cleveland Simpson (R. 5) and contends that as the alleged illegitimate child of the insured he is entitled to be regarded as a "child" under the policy and should be paid the proceeds of the policy.

Prudential expressly denies that Willis is in fact the child of the insured. However, even if such were the case, Prudential submits that Georgia law is controlling as to the meaning of the term "child or children" under the Servicemen's Group Life Insurance Act and that an illegitimate does not possess the legal status of a "child" under Georgia law and therefore Willis is not a recognized beneficiary under the insurance policy. Consequently, Prudential submits that the trial court erred as a matter of law in denying Prudential's cross motion for summary judgment and in granting Willis' motion for summary judgment, and that the Court of Appeals

further erred in affirming the judgment and decision of the trial court and in denying Prudential's motion for rehearing.

9.

Assignments of Error

Prudential assigns error upon the entire decision and opinion of the Court of Appeals of Georgia for the reason that it is contrary to law in the particulars hereinafter stated.

(A)

The Court of Appeals erred in affirming the denial of Prudential's cross-motion for summary judgment and the granting of Willis' motion for summary judgment in that its decision is contrary to the clear and unambiguous principles of law declared by this Honorable Court in the cases of *Foster* v. *Cheek*, 212 Ga. 821 (1957) and *Cooper* v. *Melvin*, 223 Ga. 239 (1967), which unanimously established that Georgia law is controlling in a determination of the meaning of the term "child or children" in the beneficiary clause of Federal insurance statutes such as the Servicemen's Group Life Insurance Act, 79 Stat. 883, 38 U.S.C.A. § 770, and that an illegitimate is deemed *not* to be a "child" under such statutes.

(B)

The Court of Appeals erred in determining that Federal law and not Georgia law is controlling in a determination of the meaning of the term "child or children" in the beneficiary clause of the Servicemen's Group Life Insurance Act, 79 Stat. 883, 38 U.S.C.A. § 770, wherein the term is undefined. The Court erroneously held:

> "Therefore, we think the question should be decided by application of the Federal Law."

(1) Said holding is erroneous in that it is contrary to a decision of the United States Supreme Court and to two unanimous decisions of this Court which hold that where a familial term is undefined in a Federal statute,

the Court must look to the law of the state, "there being no federal law of domestic relations" *De Sylva* v. *Ballentine*, 351 U.S. 570 (1955); *Foster* v. *Cheek*, 212 Ga. 821 (1957); *Cooper* v. *Melvin*, 223 Ga. 239 (1967).

(2) Said holding was also based on the Court of Appeals' erroneous determination that the decision of this Court in the case of *Cooper* v. *Melvin*, *supra*, did not decide the issue of whether state or federal law would be applied. The Court of Appeals' reasoning is not supported by the *Cooper* opinion, which relied on and cited *Foster* v. *Cheek*, *supra*, a decision of this Court which expressly and unequivocally determined that state law is applicable.

10.

Reasons for Granting Certiorari

(1) The questions involved in this application for certiorari are matters of gravity and importance and are of great public concern.

(2) In view of the great number of servicemen covered under the group policy and statute referred to herein, the questions presented are raised continually and involve numerous persons as is evidenced by the fact that just this week on January 11, 1971, this Court heard arguments in the case of *Dobyns, et al.* v. *The Prudential Insurance of America*, No. 26279, involving the same question.

(3) The decision of the Court of Appeals is in direct conflict with settled prior unanimous decisions of this Court, and, if permitted to stand, will create confusion and uncertainty in the law. The decision of the Court of Appeals is particularly in conflict with the decisions of this Honorable Court in *Foster* v. *Cheek*, *supra*, and *Cooper* v. *Melvin*, *supra*, and embodies an effort on the part of the Court of Appeals to reverse the holdings of this Honorable Court in those cases.

11.

Concurrently with the filing of this petition for a writ of certiorari, petitioner is filing written argument and

brief of authorities, pointing out in greater detail the general importance of the questions involved and why the decision by the Court of Appeals is erroneous.

WHEREFORE, petitioner prays that this Court grant this application for writ of certiorari and that the judgment and decision of the Court of Appeals of Georgia be reviewed and reversed and the errors committed by the Court of Appeals of Georgia in said judgment and decision be considered and corrected.

Respectfully submitted,

LAVENDER & CUNNINGHAM

/s/ Woodrow Lavender

/s/ Fred Cunningham

11 Thomas Street
Elberton, Georgia

KING & SPALDING

/s/ Chas. L. Gowen

/s/ A. Felton Jenkins, Jr.

/s/ Joseph B. Haynes

Attorneys for
The Prudential Insurance
Company of America

2500 Trust Company of
Georgia Building
Atlanta, Georgia 30303
577-5350

IN THE SUPREME COURT OF GEORGIA

No. ———

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
APPLICANT FOR CERTIORARI–

vs.

LORENZO WILLIS, a minor, by Willie Wilbon, next friend,
DEFENDANT IN CERTIORARI

TO: HONORABLE E. FREEMAN LEVERETT
HEARD & LEVERETT
P. O. BOX 896
ELBERTON, GEORGIA
ATTORNEY FOR DEFENDANT IN
CERTIORARI IN THE
ABOVE-STATED CASE

You are hereby notified that a Petition for Certiorari to review the decision of the Court of Appeals of Georgia in the case of *The Prudential Insurance Company of America* v. *Lorenzo Willis, Court of Appeals No. 45731*, was filed with the Clerk of the Supreme Court of Georgia on the 15th day of January, 1971. A copy of said Petition is attached hereto and served herewith upon you.

LAVENDER & CUNNINGHAM

/s/ Woodrow Lavender
/s/ Fred Cunningham by JBH

11 Thomas Street
Elberton, Georgia

KING & SPALDING

/s/ Chas. L. Gowen
/s/ A. Felton Jenkins, Jr.

Attorneys for
The Prudential Insurance
Company of America

2500 Trust Company of
Georgia Building
Atlanta, Georgia

EXHIBIT "A"

IN THE COURT OF APPEALS OF GEORGIA

Number 45731

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
APPELLANT

v.

LORENZO WILLIS, a minor, by Willie Wilbon, next friend,
APPELLEE

On Appeal from the Superior Court
of Elbert County, Georgia

NOTICE OF INTENT TO APPLY FOR A WRIT OF CERTIORARI

NOW COMES THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, appellant in the above styled case, and within ten (10) days from the final order of the Court of Appeals denying Prudential's Motion for Rehearing, gives this written notice to the Clerk of the Court of Appeals of Georgia of Prudential's intention to apply to the Supreme Court of Georgia for a writ of certiorari.

This 22nd day of December, 1970.

LAVENDER & CUNNINGHAM

/s/ Woodrow Lavender

P. O. Box 40
Elberton, Georgia

KING & SPALDING

/s/ A. Felton Jenkins, Jr.

/s/ Joseph B. Haynes

Attorneys for Appellant
The Prudential Insurance
Company of America

2500 Trust Company of
Georgia Building
Atlanta, Georgia 30303

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Notice upon counsel for appellee by depositing a copy of same in the United States Mail with sufficient postage thereon addressed as follows:

Mr. E. Freeman Leverett
Heard & Leverett
P. O. Box 896
Elberton, Georgia

This 22nd day of December, 1970.

/s/ A. Felton Jenkins, Jr.
A. FELTON JENKINS, JR.

CERTIFICATE OF COUNSEL

We, Charles L. Gowen, Woodrow Lavender, Fred Cunningham, A. Felton Jenkins, Jr. and Joseph B. Haynes, counsel of record for The Prudential Insurance Company of America, Applicant for the Writ of Certiorari, do hereby certify that we verily believe that this case is one which is contemplated by the rules of this Court pertaining to certiorari, and that it does not fall within the class of those prohibited by the rules of this Court, and that we verily believe that the Writ of Certiorari should be granted under said rules in the present case.

/s/ Chas. L. Gowen
CHARLES L. GOWEN

/s/ Woodrow Lavender
WOODROW LAVENDER

/s/ Fred Cunningham
FRED CUNNINGHAM

/s/ A. Felton Jenkins, Jr.
A. FELTON JENKINS, JR.

/s/ Joseph B. Haynes
JOSEPH B. HAYNES

[Certificate of Service (Omitted in Printing)]

Decided May 20, 1971
6 to 1

IN THE SUPREME COURT OF GEORGIA

26401

PRUDENTIAL INSURANCE CO. OF AMERICA

v.

WILLIS, by n/f

PER CURIAM. We granted certiorari in this case, Prudential Insurance Co. of America v. Willis, by n/f, —— Ga. App. —— (—— SE2d ——), because the question is controlled by Dobyns v. Prudential Ins. Co. of America, 227 Ga. 253 (—— SE2d ——); Cooper v. Melvin, 223 Ga. 239 (—— SE2d ——) and Foster v. Cheek, 212 Ga. 821 (96 SE2d 545); See also S.A.L. Rwy. v. Kennedy, 240 U.S. 489, 36 S.Ct. 458 and DeSylva v. Ballentine, 351 U.S. 570, 76 S. Ct. 974; and require a reversal of the decision by the Court of Appeals.

Judgment reversed. All the Justices concur except Felton and Hawes, J.J., who dissent.

26401. #201 to 6 to 1.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

v.

WILLIS, by n/f

FELTON, Justice, dissenting. This court granted certiorari in this case, Prudential Ins. Co. of America v. Willis, by n/f, —— Ga. App. —— (—— SE2d ——), to determine whether or not the meaning of the term "child or children" in the beneficiary clause of the Servicemen's Group Life Insurance Act, 79 Stat. 883 (1965), 38 U.S.C.A. § 770, must be determined according to state or federal law. I have investigated the question in great depth, assisted by the splendid briefs filed by both parties, and have concluded that the term should be construed under federal law under the terms of the supremacy terms of the United States Constitution and not under Georgia law. It follows that Dobyns v. Prudential Ins. Co. of Atlanta, —— Ga. —— (—— SE2d ——) No. 26279, decided by this court on January 29, 1971, Cooper v. Melvin, 223 Ga. 239 (154 SE2d 373) and Foster v. Cheek, 212 Ga. 821 (96 SE2d 545), are not controlling in this case and should be overruled to the extent that they hold that Georgia law applies. An insight into the answer to the question in this case comes from the decision of the Supreme Court of the United States in Labine v. Vincent, —— U.S. —— (—— SC ——, —— LE2d ——) (No. 5257, decided on March 29, 1971), wherein the court held that the Louisiana law, denying the right of an illegitimate child to inherit from his intestate father, did not violate the equal protection and due process clauses of the United States Constitution. This court held the same thing as to Georgia law in Pettiford v. Frazier, 226 Ga. 438 (175 SE2d 549). *In those cases there was no question as to whether federal law applied because of a congressional policy which conflicted with state law.* Wallis v. Pan American Petroleum Co., 384 U.S. 63, 68 (—— SC ——, —— LE2d ——). The United States Supreme Court has unanimously held, in-

sofar as we know, that *the relationship between a serviceman and the federal government is to be governed by federal law, not state law.* United States v. Standard Oil Co., 332 U.S. 301, 305 (—— SC ——, —— LE2d ——). In Wissner v. Wissner, 338 U.S. 655 (—— SC ——, —— LE2d ——), the deceased had designated his mother as a beneficiary under a policy of insurance pursuant to the National Service Life Insurance Act of 1940. Upon his death, his widow claimed a part of the proceeds under the California Community Property law. The court held for the mother, declaring that the state law could not be given effect, stating that the Act was the Congressional method of affording a *uniform* and comprehensive system of life insurance for members and veterans of the armed forces of the United States. In Woodward v. United States, 341 U.S. 112 (—— SC ——, —— LE2d ——), the court held that an adopted brother could take as a beneficiary under the 1940 Act, *without regard for state law.* In United States v. Zazone, 344 U.S. 602, 610 (—— SC ——, —— LE2d ——), the court said that such an insurance statute "*is an expression of legislative intent* rather than the embodiment of an agreement between Congress and the insured person. Only the intent of Congress, which in this case is the insurer, need be ascertained to fix the meaning of the statutory terms; the layman understanding of the policy holder does not have the relevance here that it has in the construction of a commercial contract." In United States v. Oregon, 366 U.S. 643, 648-9 (—— SC ——, —— LE2d ——), it was held that a federal statute, providing that the estate of a veteran who died in the veteran's hospital vested in the United States was controlling as against an Oregon law providing that his property would escheat to the state. In Davenport v. Servicemen's Group Life Ins. Co., 119 Ga. App. 685, 688 (168 SE2d 621), the Court of Appeals held: "However, where state law conflicts with the right granted by Congress to a serviceman to name in the first instance a beneficiary of his own choosing, state law must yield. Const. Art XII, Sec. 1 (*Code Ann.* § 2-8001); Gainey v. Bank of Thomasville, 176 Ga. 736 (168 SE 877); O'Malley v. Wilson,

182 Ga. 97, 109 (185 SE 109)." The fact, that the definitions in *Federal employees'* congressionally authorized insurance policies contain the same provisions as to the meaning of "child or children," does not necessarily mean that the same terms in an *armed serviceman's insurance policy* mean the same. We have held, as the Court of Appeals has, that armed servicemen's policies are construed under federal law. The only point blank State authority against what we here rule is Dobyns v. Prudential Ins. Co. of America, supra. Our ruling in that case should be overruled because federal law applies in such a case instead of the rule in a federal employee's policy, as we held. While we are not bound by any federal cases except those from the Supreme Court, where there is a conflict in lower federal court decisions as to whether an illegitimate takes under the term "child," a case which refused to deny the right to an illegitimate should be followed by this court as controlling in the absence of a Supreme Court decision so holding, *where the Supreme Court denied a certiorari in such case.* Metropolitan Life Ins. Co. v. Thompson, 368 Fed. 791 (CA2d 1966). However, Supreme Court decisions apply federal law in cases involving servicemen's insurance policies as shown above.

The Georgia cases cited by the majority opinion are not controlling on Federal questions. S. A. L. Rwy. v. Kennedy, supra, is not authority for the preposition for which it is cited. There the Supreme Court of the United States was construing the Federal Employers' Liability Act. The court, in deciding whether the Act was intended to have a uniform application in all states, decided that it did not so intend because to do so would attribute to Congress the intent to create uniformity on one subject by "*producing discord and want of uniformity as to many others.*" Every reasonable consideration of the law involved in this case points to an unquestioned intention to provide uniformity among all of the States of the Union. DeSylva v. Ballentine, supra, is not applicable to the facts in this case. That case simply said that the question of who should inherit property depended upon the law of the state where the parties lived, a

matter traditionally left to state law in matters where there is no overriding congressional purpose to make a federal law uniform in all states. In Metropolitan Life Ins. Co. v. Thompson, 368 F. 791 (C.S.3rd 1966); Cert. denied, 388 U.S. 914 (—— SC ——, —— LE2d ——), the court said: "Whether the same reasoning would be employed today to exclude a New York author's illegitimate child from copyright renewal rights does not require our speculation. For however appropriate it may be to follow state laws of inheritance where the problem is essentially one of passing accumulated wealth to succeeding generations, *we think it reasonable to infer here that Congress intended the distribution of proceeds of term insurance to provide a substitute source of income for that lost by the insured's death.* Therefore, the De Sulva case which involved a different Act with different purposes does not control the resoultion of the present problem of statutory construction." (Emphasis supplied.) In the Thompson case, certiorari was denied by the Supreme Court of the United States. If this court is going to wait until the Supreme Court grants a certiorari in such a case and expressly rules that what I am contending for is correct by an express and final decision, it will be a long time before the question in this case is settled in Georgia. However, the answer will be quick if this case is brought to the Supreme Court by the respondent, in my opinion.

In Levy v. Louisiana, 391 U.S. 68 (—— SC ——, —— LE2d ——), a Louisiana statute, which denied wrongful death recovery for the death of the mother to illegitimate children, was held unconstitutional as a denial of equal protection. The court declared: "We start from the premise that illegitimate children are not 'nonpersons.' They are humans, live, and have their being. They are clearly 'persons' within the meaning of the Equal Protection clause of the Fourteenth Amendment. While a State has broad power when it comes to making classifications it may not draw a line which constitutes an invidious discrimination against a particular class. . . . Why should the illegitimate child be denied rights merely because of his birth out of wedlock? He certainly is

subject to all the responsibilities of a citizen, including the payment of taxes and conscription under the Selective Service Act. How under our constitutional regime can he be denied correlative rights which other citizens enjoy? Legitimacy or illegitimacy of birth has no relation to the nature of the wrong allegedly inflicted on the mother. These children, though illegitimate, were dependent on her; she cared for them and nurtured them; they were indeed hers in the biological and in spiritual sense; in her death they suffered wrong in the sense that any dependent would. We conclude that it is invidious to discriminate against them when no action, conduct, or demeanor of theirs is possibly relevant to the harm that was done the mother." (Under *Ga. Code Ann.* § 105-1306 (Ga. L. 1887, pp. 43, 45; as amended by Ga. L. 1960, pp. 968, 969), a dependent illegitimate has the right to sue for a tortious injury to or death of his or her mother.)

The judgment of the Court of Appeals is correct and should be affirmed.

26401

SUPREME COURT OF GEORGIA

Atlanta, May 20, 1971

The Honorable Supreme Court met pursuant to adjournment.

The following judgment was rendered:

PRUDENTIAL INSURANCE CO. OF AMERICA

v.

LORENZO WILLIS, by n/f

This case came before this court by writ of certiorari from the Court of Appeals; and, after argument had, it is considered and adjudged that the judgment of the Court of Appeals be reversed and that such further action be taken by the Court of Appeals as may be necessary to give effect to the opinion filed in the case. All the Justices concur except Felton and Hawes, JJ., who dissent. Bill of costs, $100.00.

* * * *

SUPREME COURT OF THE UNITED STATES

No. 70-5344

LORENZO WILLIS, ETC., PETITIONER

v.

PRUDENTIAL INSURANCE COMPANY OF AMERICA

On petition for writ of Certiorari to the Supreme Court of the State of Georgia.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

November 9, 1971

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-5344

LORENZO WILLIS, A MINOR, BY WILLIE WILBON, NEXT FRIEND,

Petitioner,

v.

PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF OF PETITIONER

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-5344

LORENZO WILLIS, A MINOR, BY WILLIE WILBON, NEXT FRIEND,

Petitioner,

v.

PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF OF PETITIONER

OPINIONS BELOW

The opinion of the Supreme Court of Georgia whose decision is under review here is reported as *Prudential Insurance Company of America v. Willis*, 227 Ga. 619, 182 S.E.2d 420, decided May 20, 1971 (A. 113). This decision reversed the decision of the Court of Appeals of Georgia in the same case reported as *Prudential Insurance Company of*

America v. Willis, 123 Ga. App. 150, 179 S.E.2d 688, decided November 30, 1970 (A. 95). The opinion and judgment of Elbert Superior Court, the trial court below, is unreported (A. 90).

JURISDICTION

The opinion and judgment of the Supreme Court of Georgia, the highest court in the state in which a decision could be had, was rendered May 20, 1971. The petition for certiorari was filed June 10, 1971, and certiorari was granted November 9, 1971. Jurisdiction is invoked under 28 U.S.C.A. 1257(3), petitioner having specially set up and claimed certain titles, rights and privileges under the Constitution and laws of the United States, to wit, 79 Stat. 883, 38 U.S.C.A. 770, and the due process clause of the Fifth Amendment and the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

(1) Constitution of the United States, Amendment V:

> ". . . [N]or shall any person . . . be deprived of life, liberty or property, without due process of law."

(2) Constitution of the United States, Amendment XIV, Section 1:

> ". . . [N]or shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

(3) Servicemen's Life Insurance Act of 1965, 79 Stat. 883, 38 U.S.C.A. 770(a):

> "(a) Any amount of insurance under this subchapter in force on any member or former member on the date of his death shall be paid, upon the establishment of a valid claim therefor, to the person or per-

sons surviving at the date of his death, in the following order or precedence:

"First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received in the uniformed services prior to such death;

"Second, if there be no such beneficiary, to the widow or widower of such member or former member;

"Third, if none of the above, to the child or children of such member or former member and descendants of deceased children by representation;

"Fourth, if none of the above, to the parents of such member or former member or the survivor of them;

"Fifth, if none of the above, to the duly appointed executor or administrator of the estate of such member or former member;

"Sixth, if none of the above, to other next of kin of such member or former member entitled under the laws of domicile of such member or former member at the time of his death."

QUESTIONS PRESENTED

(1) Whether the Supreme Court of Georgia was correct in construing the beneficiary clause of the Serviceman's Life Insurance Act, 79 Stat. 883, 38 U.S.C.A. 770(a) (Third), declaring that the policy proceeds thereunder shall in certain instances be paid to the "child or children of such (serviceman) . . . ," as excluding acknowledged illegitimate children of a deceased serviceman.

(2) Whether the Supreme Court of Georgia was correct in holding that the meaning of the words "child or children" as used in the beneficiary clause of said statute should be construed according to the laws of Georgia rather than according to federal principles involving the purpose and intent of Congress in the enactment of said statute.

(3) Whether the interpretation placed upon said statute by the Supreme Court of Georgia denies to petitioner, a Negro, the equal protection and due process of law guaranteed by the Fourteenth Amendment, and the due process of law guaranteed by the Fifth Amendment, in that the classification thus made between legitimate and illegitimate children (a) Is without any reasonable basis in fact to the purpose of Congress in providing a substitute source of income for the persons legally dependent upon a deceased serviceman, and (b) Unconstitutionally discriminates against petitioner's class, with respect to whom the incidence of illegitimacy is much higher than the national average due to a history of slavery and discrimination.

STATEMENT

Relying upon Georgia law governing intestate succession, the Supreme Court of Georgia has held in this case that when Congress provided in the beneficiary clause of the Serviceman's Life Insurance Act, 79 Stat. 883, 38 U.S.C.A. 770(a), that the insurance benefits thereunder provided would be paid to the "child or children of such member . . ." in certain instances, that Congress intended to limit these benefits to legitimate children of the deceased serviceman, and to exclude his illegitimate children.

Lorenzo Willis, petitioner herein, is the three-year-old illegitimate Negro son of a 15-year-old mother (A. 43) and a 20-year-old deceased serviceman (A. 64) who was killed in Viet Nam on September 19, 1968 (A. 4, 12). This action was brought on behalf of the minor petitioner in the name of his maternal grandmother, to recover the $10,000 proceeds of an insurance policy issued upon the life of the deceased pursuant to the Serviceman's Life Insurance Act of 1965, 79 Stat. 883, 38 U.S.C.A. 770(a).

Prior to his death, deceased acknowledged petitioner as his son (A. 57, 58, 60, 65), and he has been so recognized by the Social Security Administration and the Veterans Admin-

istration (A. 59). Following the death of deceased in action, his father offered to assist in securing benefits for the child and papers were turned over to him for that purpose, but instead of securing the benefits for his grandson, the grandfather obtained them for himself (A. 66, 82-3). Deceased left no widow surviving, and had not, prior to his death, designated a named beneficiary in writing to receive the policy proceeds which, under the statute, required that they devolve in accordance with the priorities specified in the statute (A. 15).

Following the filing of this action, Requests for Admissions were served (A. 17), depositions were taken (A. 40-87), and both parties moved for summary judgment (A. 25, 37). The trial court entered order on July 14, 1970, granting the motion of petitioner and denying the motion of respondent (A. 90). Respondent appealed to the Court of Appeals of Georgia, and that Court affirmed on November 30, 1970 (A. 95). *Prudential Ins. Co. of America v. Willis*, 123 Ga. App. 150, 179 S.E.2d 688 (1971). The Court of Appeals gave recognition to the fact that this being a federal statute, it was to be construed according to federal principles, and declared: "We do not believe that Congress intended an administration on this law varying from State to State. The legislative history of the law indicates that the purpose of the same was geared to assuring support for dependents rather than passing on accumulated wealth to relatives according to local laws of inheritance as has been ruled by our Georgia courts." 123 Ga. App. at 155-6 (A. 101).

The Supreme Court of Georgia granted certiorari, and on May 20, 1971, reversed the decision of the Court of Appeals (A. 113), without discussion, relying upon its prior decision in *Dobyns v. Prudential Ins. Co. v. America*, 227 Ga. 253, 179 S.E.2d 915, decided January 29, 1971. *Dobyns* in turn relied upon the decision in *Cooper v. Melvin*, 223 Ga. 239, 154 S.E.2d 373 (1967), construing similar language in the Federal Employees Group Life Insurance Act (now 5 U.S.C.A. 8705 *et seq.*). In the Cooper case, the Supreme

Court of Georgia ignored entirely the fact that it was interpreting a federal statute, and resolved the question according to Georgia inheritance and property law concepts.

Justice Felton, with Justice Hawes, dissented, declaring that under decisions of this Court, the question was controlled by federal law, and that Congress did not intend to exclude illegitimate children from taking on an equal basis with legitimate children.

This Court granted certiorari and leave to proceed in forma pauperis on November 9, 1971.

SUMMARY OF ARGUMENT

(1) The Supreme Court of Georgia erred in construing the words "child or children" in the beneficiary clause of the Serviceman's Life Insurance Act, 38 U.S.C.A. 770(a) (Third), according to Georgia laws governing such terms when used in the intestacy statute, wills and state wrongful death statute. Instead, that court should have recognized that this being a federal statute rather than an ordinary policy of insurance, a federal principle should be articulated to govern interpretation. The relationship between a serviceman and the United States has been characterized by this Court as being "distinctively federal in character," and in all cases dealing with the rights of servicemen, this Court resolved the questions according to federal principles, disregarding state law entirely. The decision in *DeSylva v. Ballentine*, 351 U.S. 570 (1956), holding that Congress intended to refer to state law in the Copyright Act, is not applicable here. In that case, the Court did not hold that Congress intended to refer to state law under all federal statutes, but only under the one there in issue. The Copyright Act was concerned only with the creation and protection of a right so as to encourage literacy achievement. What happened at death was immaterial to the Congressional policy, and devolution at death was really a question of the descent of property. In the Serviceman's Life Insurance Act, however,

the entire Congressional purpose is concerned with what happens upon death. To refer to state law in such a case would frustrate the Congressional policy, and create diversity of result in an area where uniformity is highly desirable.

(2) Properly construed, the words "child or children" in the statute in question should be construed as including illegitimate children as well as legitimate children. The obvious purpose of the statute was to provide a substitute source of income for those persons likely dependent upon the deceased, and construing the statute in light of this purpose requires that illegitimates be included, for they are equally dependent upon the father as a legitimate child. Under Georgia law, a father is required to support his illegitimate children. The rule that illegitimate children could not inherit arose at a time when the law was overly-concerned with protecting the stability of land titles. Such a concern has no relevance in a social welfare type statute which is designed to promote humane objectives devoid of such considerations.

(3) Excluding illegitimates from taking under the statute gives rise to a classification unsupported by any compelling state interest, and one which does not rest upon some ground of difference having a fair and substantial relation to the object of the legislation. Such a classification would render the statute unconstitutional under either the rational connection or compelling state interest test. Regardless of whether insurance is such a right as to be subject to the "compelling state interest" test, the basis of the classification itself, i.e., status of one's birth, clearly requires application of this test. *Labine v. Vincent*, 401 U.S. 532 (1971), is distinguishable. Intestate succession deals with a subject matter which can support such a discrimination, but the purpose of the Serviceman's Life Insurance Act, i.e., to provide a substitute source of income for dependents, has no relevancy to legitimacy or illegitimacy. The desire to strengthen family life, relied on in *Labine*, is not pertinent here for the foregoing reason, and for the additional reason that Georgia law

expressly recognizes and enforces the obligation of the father to support his illegitimate children. Neither can the discrimination be upheld as a means of discouraging promiscuity, as this penalizes a helpless child for the conduct of his parents over which he has no control, and this objective can be better achieved by less sweeping means which do not impinge upon the rights of innocent persons.

(4) The exclusion of illegitimates also violates due process and equal protection because it effectuates an additional discrimination against Negroes. The rate of illegitimacy among the non-white population is much greater than among the white, being in excess of 8 to 1 in Georgia, and this difference is traceable to the continuing effects of the institution of Negro slavery and state-enforced discrimination.

ARGUMENT

I. THE SUPREME COURT OF GEORGIA ERRED IN CONSTRUING THE SERVICEMAN'S LIFE INSURANCE ACT ACCORDING TO STATE LAW RULES.

The *per curiam* opinion rendered by the Supreme Court of Georgia declares merely that the case is controlled by *Dobyns v. Prudential Ins. Co.*, 227 Ga. 253, 179 S.E.2d 915, *Cooper v. Melvin*, 223 Ga. 239, 154 S.E.2d 373, and *Foster v. Cheek*, 212 Ga. 821, 96 S.E.2d 545. The *Dobyns* case involved the same statute in question here, and in that case, the Court's opinion did not enter into any discussion of the problem, but relied merely upon the *Cooper* case, declaring:

> "1. Under the full bench decision of this court in Cooper v. Melvin, 223 Ga. 239 (154 S.E.2d 373), construing the identical language of the Federal Employees' Group Life Insurance Act of 1954 (50 U.S.C.A. § 3085) the language in 38 U.S.C.A. § 770 providing for the payment of Servicemen's Group Life Insurance benefits in the event the serviceman fails to designate a beneficiary must be construed as not including an illegitimate, though acknowledged,

child of a serviceman where the child has not been made legitimate by one of the methods provided by law. See Code §§74-101, 74-103." (227 Ga. at 254).

In the *Cooper* case, involving the Federal Employees Group Life Insurance Act, the Georgia Supreme Court approached the problem by declaring that "[W]e must therefore look to the *laws in this State* relating to illegitimate children to determine whether they are included in the term 'children' used in the *policy*," citing *Foster v. Cheek, supra.* The Court then referred to the fact that only legitimate children had been held to be included in the term "children" when used in deeds, wills, inheritance, and wrongful death statutes and the like, and concluded: "In view of the statutes and decisions of this court defining the word 'children,' and the policy of our law as to inheritance by illegitimate children, we must hold that the word 'children' in the insurance policy of the putative father of the illegitimate children did not entitle them to share in the proceeds of the policy, and it was error to direct a verdict finding them entitled to a share of the proceeds, and to order the disbursement of one-half of the proceeds of the policy to them." *Cooper v. Melvin*, 223 Ga. at 242.

In *Foster v. Cheek, supra*, also involving the Federal Employees' Life Insurance Act, the question was whether an adopted child would be included within the statutory language. In resolving the question, the Georgia Court recognized that it was construing a federal statute, and declared, "There being no federal law of domestic relations, which is primarily a matter of State concern (*DeSylva v. Ballentine*, 351 U.S. 570, 76 Sup. Ct. 974, 100 L.Ed. 1415), we must look to the law of this State in order to determine whether or not the defendant in error in the instant case occupies the position of a "child" under the provisions of the act above referred to and the policy of insurance involved." 212 Ga. at 827. Turning to Georgia law governing adopted children, the Court held that an adopted child would be entitled to take under the language of the act and policy in question.

It is therefore not subject to dispute that the Supreme Court of Georgia in this case interpreted the language of the federal statute according to state law rules rather than undertaking to discover a federal rule to govern the question.

In so doing, the Supreme Court of Georgia disregarded entirely the fact that this being a federal statute, it should be interpreted according to federal principles and not state law. *Calhoun Gold Mining Co. v. Ajax Gold Mining Company*, 182 U.S. 499, 505 (1901); *Clearfield Trust Co. v. United States*, 318 U.S. 363, 366 (1943); Constitution of the United States, Art. VI, Cl. 2. Also disregarded was the recognition that "Perhaps no relation between the Government and a citizen is more distinctively federal in character than that between it and members of its armed forces," and one to be "governed by federal authority." *United States v. Standard Oil Co.*, 332 U.S. 301, 305 (1947). In several cases, this Court has resolved questions concerning servicemen according to federal principles in a manner directly contrary to what would have been required under state law. See *Wissner v. Wissner*, 338 U.S. 655 (1950), holding that insurance proceeds under the National Service Life Insurance Act of 1940 would devolve according to federal law rather than the California Community property law; *Woodward v. United States*, 341 U.S. 112 (1951), holding that an adopted brother was included within the words "brother" as used in the same act, without any reference to state law being made; *United States v. Zazove*, 334 U.S. 602, 610 (1948), holding that the statutory provisions governing the NSLI Act of 1940, "are to be construed liberally to effectuate the beneficial purposes that Congress had in mind"; *United States v. Oregon*, 366 U.S. 643, 648-9 (1961), holding that the estate of a veteran dying in a V.A. Hospital would devolve according to federal law rather than the state law of domicile.

The Supreme Court of Georgia also cited *DeSylva v. Ballentine*, 351 U.S. 570 (1956) for the proposition that with respect to questions of familial relationships, Con-

gress usually refers to state law concepts, there being no federal law of domestic relations. 351 U.S. at 580, with Mr. Justice Douglas and Mr. Justice Black concurring in the result but dissenting on the question of reference to state law. However, *DeSylva* does not hold that Congress so intends in *every* statute, but only that Congress did so in the statute in question. The *DeSylva* case involved the title to renewal rights under the Copyright Act, and as this Court noted, "This is really a question of the descent of property . . .", 351 U.S. at 582, and since New York law permitted inheritance by an illegitimate, the illegitimate daughter was held entitled to share in the renewal rights. In the *DeSylva* case, Congress was concerned only with the *creation* and protection of a right so as to encourage literary and artistic achievement. These purposes are not affected by what happens upon the death of the author. Consequently, devolution upon death could be in accordance with state law without affecting the Congressional purpose. In the present Act, however, the entire congressional purpose is concerned with *what happens upon death*, and unless one uniform rule is applied, the purpose of Congress would be frustrated.

The Court of Appeals for the Third Circuit has held that *DeSylva* doew not apply in a case like the present on the reasoning that "For however appropriate it may be to follow state laws of inheritance where the problem is essentially one of passing accumulated wealth to succeeding generations, *we think it reasonable to infer here that Congress intended the distribution of proceeds of term insurance to provide a substitute source of income for that lost by the insured's death.* Therefore, the *DeSylva* case which involved a different act with different purposes does not control the resolution of the present problem of statutory construction." *Metropolitan Life Ins. Co. v. Thompson*, 368 F.2d 791 (C.A. 3rd 1966), cert. den., 388 U.S. 914.

In addition, where Congress intended to refer a question to state law in the present act, it expressly so declared, for

in paragraph 6 of the same statute, Congress included the following as a final catchall:

> "Sixth, if none of the above, to other next of kin of such member or former member entitled under the laws of domicile of such member or former member at the time of his death".

There is no such express reference in the third paragraph, which is involved here. Hence, *expressio unius est exclusio alterius.*

Moreover, in a subject which this Court has characterized as "distinctively federal", *United States v. Standard Oil Company, supra,* reference to state law would produce a contrariety of result in an area where national uniformity is desirable.

The pressing need for uniformity in matters affecting servicemen is by itself a sufficient reason for requiring the application of a federal rule, rather than referring the matter to state law concepts, for generally, Congress intends that its laws shall operate uniformily throughout the nation so that the federal program will remain unimpaired. *Reconstruction Finance Corp. v. County of Beaver,* 328 U.S. 204, 209 (1946).

Therefore, it is submitted that the Supreme Court of Georgia erred in resolving the question according to Georgia laws governing intestacy, wills, wrongful death and the like.

II. CONGRESS DID NOT INTEND TO EXCLUDE ILLEGITIMATE CHILDREN OF A DECEASED SERVICEMAN FROM BENEFITS UNDER THE SERVICEMAN'S LIFE INSURANCE ACT.

To begin with, the words of the statute, 38 U.S.C.A. 770(a) (Third), are unequivocal. They are "child or children or such member . . ." The statute does not say "legitimate children". A child is a child whether he is legitimate or illegitimate. "We start with the premise that illegitimate children are not 'non persons.' They are humans, live and

have their being." *Levy v. Louisiana*, 391 U.S. 68, 70 (1968).

Secondly, such a construction does not comport with the obvious Congressional purpose. The words of a statute should be read "not in a vacuum, but in the light of the policies [it] was intended to serve." *Pennsylvania Railroad Co. v. Rychlik*, 352 U.S. 480, 488 (1957); *Hagger Company v. Helvering*, 308 U.S. 389, 394 (1940). "There is a presumption against a construction which would render a statute ineffective or insufficient, or which would cause grave public injury or even inconvenience." *Bird v. United States*, 187 U.S. 118, 124, (1902). "We are therefore bound to give heed to the rule that, where a particular construction of a statute will occasion great inconvenience or produce inequality and injustice, that view is to be avoided if another and more reasonable interpretation is present in the statute." *Knowlton v. Moore*, 178 U.S. 41, 77 (1900).

It would be a perversion of reason to impute to Congress an intent to write into this humane legislation the cruel, antiquated, 16th Century notions of morality, as described by Blackstone,[1] which treated bastards as outcasts of society.

The rule disfavoring illegitimate children arose centuries ago in part from a desire to preserve stability in land titles. *Strahan v. Strahan*, 304 F. Supp. 40 (D.C. La. 1969), and

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[1] "I proceed next to the rights and incapacities which appertain to a bastard. The rights are very few, being only such as he can acquire; for he can inherit nothing, being looked upon as the son of nobody; and sometimes called filius nullius (the son of no one), sometimes filius populi (the son of the people). * * * The incapacity of a bastard consists principally in this, that he cannot be heir to any one, neither can he have heirs, but of his own body; for being nullius filius, he is therefore kin to nobody, and has no ancestor from whom any inheritable blood can be derived. A bastard was also, in strictness, incapable of holy orders; and, though that were dispensed with, yet he was utterly disqualified from holding any dignity in the church." *Blackstone's Commentaries Book I*, p. 458-9.

see note, "Equal Protection and the Applicability of Levy v. Louisiana to Succession Law", 44 Tul. L.R. 640, 643 (1970).

In the enactment of the Serviceman's Life Insurance Act, Congress legislated at a different time and under different circmustances devoid of such considerations. As observed by Mr. Justice Holmes,

> "A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used." *Towne v. Eisner*, 245 U.S. 418, 425 (1918).

And, as one of the great scholars of the law expressed it almost 30 years ago, "The tendency to assume that a word which appears in two or more legal rules, and so in connection with more than one purpose, has and should have precisely the same scope in all of them runs all through legal discussions. It has all the tenacity of original sin and must constantly be guarded against." Cook, The Logical and Legal Basis of Conflict of Laws, 159 (1942).

The proposition urged here proves itself even under Georgia law, for although the word "children" in the intestacy statute, Ga. Code §113-903(3), had been held to mean legitimate children only, *Savage v. Blanks*, 117 Ga. App. 316 (1), 160 S.E.2d 461 (1968), would it be contended that the word bears the same meaning when used in the child molestation statute, Ga. Code §26-2019, or the "enticing" statute, Ga. Code §26-2020? Such an interpretation would render illegitimate children not only *nullius filius*, as referred to in *Blackstone's Commentaries, supra*, at pp. 458-9, but also relegate them to the realm of *caput lupinum*.

Conceding that the legislative history is not very illuminating, see U.S. Code Cong. & Adm. News 3232, 89th Cong., First Sess., (1965), Congress obviously intended in the Act to provide a substitute source of income for the persons dependent upon a serviceman. Under Georgia law, a father is equally obligated to support his illegitimate as

well as his legitimate children. Ga. Code, Sections 74-202, 74-9902.

Construing similar language in the National Service Life Insurance Act of 1940, 55 Stat. 846, the Court of Appeals for the District of Columbia declared:

> "The provision for gratuitous insurance was generous legislation, plainly adopted for humane and patriotic reasons. Neither its language, its legislative history, nor its explanatory clause, persuades us that Congress wished to exclude from its benefits the child of a soldier who was not married to the child's mother. Since the child is not at fault there is no reason to penalize him. We are not persuaded that Congress thought otherwise. We agree with the District Court that we should not interpolate the word "legitimate" before the word "child". *United States v. Phillipine National Bank*, 292 F.2d 743, 745 (C.A.D.C. 1961).

A like result has been reached in other decisions construing comparable language of the Federal Employees Group Life Insurance Act. See *Metropolitan Life Ins. Co. v. Thompson* 368 F.2d 791 (C.A. 3rd 1966), cert. den. 388 U.S. 914; *Metropolitan Life Ins. Co. v. Buckley, et al.*, 278 F. Supp. 334 (D.C. Miss. 1967); *Kimble v. United States*, 345 F.2d 951, 953 (C.A.D.C. 1965); *State v. Russell*, 68 Wash. 2d 748, 415 P.2d 503 (1966); *Haley v. Metropolitan Life Ins. Co.*, 434 S.W. 2d 7 (No. 1968), and compare *Armijo v. Wesselius*, 73 Wash. 2d 716, 440 P.2d 741 (1968), upholding wrongful death recovery; *Re Woodward's Estate*, 230 Cal. App. 2d 113, 40 Cal. Rptr. 781, 12 ALR 3rd 1134 (1964), upholding family allowance award; and *Herbert v. Petroleum Pipe Inspectors, Inc.*, 396 F.2d 237 (C.A. 5th 1968), upholding recovery under the Jones Act, 46 U.S.C.A. 688, on the basis of *Levy v. Louisiana, supra;* and see generally, annotation, 38 ALR 3d 613.

A district court in Maryland has recently construed the act in question here as including illegitimates using the same

reasoning urged here. See *Manning v. Prudential Ins. Co. of America*, 330 F. Supp. 1198 (D.C. Md. 1971), where the Court declared:

> "The case of Yellow Cab Co. v. Industrial Comm. 247 N.E.2d 601 (Ill. 1969), is instructive in this regard. In that case, the sole question to be determined was whether an illegitimate child could recover under the Illinois Workmen's Compensation Act. In broadening the ancient definition of 'child' to include illegitimate children, the court, relying, inter alia, upon the statutory duty of a father to support an illegitimate child, stated: '[T]he harsh doctrines of the common law relating to the rights of illegitimate children, and the underlying social attitudes which produced these doctrines have yielded to more enlightened judicial and legislative action.' 247 N.E.2d 601, 603. We agree."

In *Middleton v. Luckenbach S.S. Co.*, 70 F.2d 326, 329 (C.A. 2d 1934), in upholding recovery under the federal death act, the Court declared:

> "Humane considerations and the realization that children are such no matter what their origin alone might compel us to the construction that, under present day conditions, our social attitude warrants a construction different from that of the early English view. The purpose and object of the statute is to continue the support of dependents after a casualty. To hold that these children or the parents do not come within the terms of the act would be to defeat the purposes of the act. The benefit conferred beyond being for such beneficiaries is for society's welfare in making provision for the support of those whom might otherwise become dependent. The rule that a bastard is nullius filius applies only in cases of inheritance. Even in that situation we have made very considerable advances toward giving illegitimates the right of capacity to inherit by admitting them to possess inheritable blood."

Of course, other courts have reached a different result. See *LaBove v. Metropolitan Life Ins. Co.*, 264 F.2d 233 (C.A. 3rd 1959); *Grove v. Metropolitan Life Ins. Co.*, 271 F.2d 918 (C.A. 4th 1959); *Barker v. Metropolitan Life Ins. Co.*, 184 F. Supp. 159 (D.C.N.C. 1960); *Tatum v. Tatum*, 241 F.2d 401, 405 (C.A. 9th 1957); *Brantley v. Skeens*, 266 F. Supp. 447 (D.C.D.C. 1959); *Metropolitan Life Ins. Co. v. Fletcher*, Civil Action No. 67-131, July 28, 1967, N.D. Ala., unreported.

The *LaBove* case, however, is clearly distinguishable, for there the question was whether an adopted child could take the proceeds of a policy *on his natural father*. To permit recovery in this case would directly conflict with a valid state concern, which was the desire that an adopted child be completely isolated from his natural father so that he might thereby assume a normal place in his adoptive family. In other words, recovery was denied not because of illegitimacy, but because one parental relationship had been destroyed so that another might be furthered, and the same result would have followed regardless of illegitimacy.

There are numerous federal statutes providing benefits of varying types to the "child" or "children", and very few of these undertake to specify whether the reference is to legitimate or illegitimate children. Note, "Illegitimacy: Definition of Children Under Federal Welfare Legislation," 67 Col. L.R. 984 (1967). As one commentator observed:

> "Thus the federal attitude toward the inclusion of illegitimates within the class of children who are eligible to receive benefits under welfare laws consists of a mixture of deferance to state policy in the field of family relations, habit rooted in a long continued common law and social discrimination against the illegitimate, and concern about the problem of proof of paternity. On balance, however, the federal welfare laws have gone far toward eliminating discrimination against the illegitimate, the longest step having been taken in the 1965 amendment to the

Social Security Act." Krause, "Equal Protection For the Illegitimate," 65 Mich. L.R. 477, 482 (1967).

Secondly, it would seem that in the context of any statute dealing with a matter of social welfare, the word "children should be held to include illegitimates, for they are more likely to be in need than legitimate children. Note, "The Rights of Illegitimates Under Federal Statutes," 76 Harv. L.R. 337, 338 (1962).

Lastly, regardless of the primary concern of the legislation, i.e., even assuming the purpose was to pass on accumulated wealth, *where Congress comes to stating preferences itself*, the legislation should be construed by the courts in such manner as to benefit those persons most likely dependent upon the deceased for support. Note, "Illegitimacy: Definition of Children Under Federal Welfare Legislation," 67 Col. L.R. 984, 989 (1967).

For all of the foregoing reasons, it is submitted that as used in the Serviceman's Life Insurance Act, the words "child or children" should be construed as including illegitimate as well as legitimate children.

III. DISCRIMINATION AGAINST ILLEGITIMATES UNDER THE SERVICEMAN'S LIFE INSURANCE ACT WOULD BE UNCONSTITUTIONAL AS AN UNREASONABLE CLASSIFICATION.

In the preceding division of the argument, petitioner has endeavored to demonstrate that as a matter of statutory interpretation, the words "child or children" as used in the Act, 38 U.S.C.A. 770(a), should be held to include illegitimate children.

In this division of the argument, petitioner will demonstrate that any different interpretation would effectuate an unconstitutional discrimination under the traditional rules governing classifications . . .[2] In the division of the argu-

[2]It would seem that both the due process clause of the Fifth Amendment, and the due process and equal protection clauses of the Fourteenth Amendment are involved. While the statute here is federal,

ment which follows, petitioner will show that such an interpretation would also involve an unlawful classification of a racial nature.

Petitioner's complaint in this case specially set forth a constitutional claim (A. 5).

The traditional rules governing classifications have been often stated. Classification is permitted, but it "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation." *Colgate v. Harvey*, 296 U.S. 404, 423 (1935). The classification must rest upon "some difference which bears a just and proper relation to the attempted classification." *Connolly v. Union Sewer Pipe Co.*, 184 U.S. 540, 560 (1902). The classification must "rest on real and feigned differences, that the distinction have some relevance to the purpose for which the classification is made . . ." *Walters v. St. Louis*, 347 U.S. 231, 237 (1954). In economic matters, at least, "The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective . . . A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it". *McGowan v. Maryland*, 366 U.S. 420, 425-6 (1961).

The classification here, however, does not deal simply with a matter of economic regulation, but is one manifesting "prejudice against (a) discrete and insular minorit[y]" which tends to be "a special condition, seriously [curtailing] the operation of those political processes ordinarily

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and any resulting interpretation may be said to be attributable to federal action, the law actually applied, under a reference to state law such as found in *DeSylva v. Ballentine*, 351 U.S. 570 (1950), is nevertheless state law, for the result would vary from state to state, and the same federal statute might be legal in one state and unconstitutional in another. While the Fifth Amendment contains no equal protection clause, the due process clause in that amendment imposes essentially the same limitations upon the validity of classifications. See *Bolling v. Sharpe*, 347 U.S. 497, 499-500 (1954).

to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry." *United States v. Carolene Products Company*, 304 U.S. 144, 153 (1938). While generally there is a presumption of constitutionality, and the burden of showing a classification void is upon the person attacking it, *Middleton v. Texas Power & Light Co.*, 349 U.S. 152, 157-8 (1918), in a case involving a classification of the type here shown, "There may be narrower scope for operation of the presumption of constitutionality . . . ," *United States v. Carolene Products Co., supra*, at p. 152, and the burden of justifying such a classification rests upon the state. *Loving v. Virginia*, 388 U.S. 1,9 (1967).

In this instance, a mere showing of rational relationship is not enough, and the classification cannot be upheld "unless shown to be necessary to promote a compelling governmental interest." *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969).

The Court has applied this stricter test in such matters as race, *McLaughlin v. Florida*, 379 U.S. 184, 191-2 (1964); ancestry, *Korematsu v. United States*, 323 U.S. 214, 216 (1944); voting, *Harper v. Board of Virginia Elections*, 383 U.S. 663, 670 (1966); procreation, *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942); education, *Brown v. Board of Education*, 347 U.S. 483, 493 (1954), and see *Fujii v. State*, 38 Cal. 2d 718, 242 P.2d 617 (1952), applying the strict test to a classification based on alienage.

In determining whether the classification here should be subjected to the more rigorous test of constitutionality, it is immaterial whether insurance proceeds or other social welfare type benefits are to be deemed to impinge upon fundamental rights, for the basis of the classification itself, i.e., the status of one's birth, most certainly does. Gray and Rudovsky, "The Court Acknowledges The Illegitimate: Levy v. Louisiana and Glona v. American Guarantee & Liability Insurance Company," 118 U. Pa. L.R. 1, 5 (1969). This distinction is borne out by *Shapiro v. Thompson*,

supra, for without deciding whether welfare benefits *per se* constituted a species of right entitled to the greater protection, the Court held that the basis of classification, i.e., the right of intestate travel, clearly was. See 394 U.S. at 634.

A classification based on legitimacy clearly serves no compelling governmental interest in the context of the present statute. As stated by two commentators on the subject:

> "Classifications based on status of birth are also similar to racial classifications in that illegitimate share with nonwhite Americans a history of widespread private discrimination reinforced and institutionalized by legal disabilities. They too are second class citizens in a society in which illegitimacy has been described as a 'psychic catastrophe'. Illegitimates suffer from psychological and social handicaps closely comparable to those which result from racial discrimination. In this context it is not surprising that legal discrimination against illegitimates tends to fall most harshly on blacks and the poor, and that in some instances this discrimination may have been designed with this specific end in mind.
>
> "Finally, like nonwhites, illegitimates constitute a class that is a "discrete and insular" minority peculiarly susceptible to prejudice which tends to 'curtail the operation of those political processes ordinarily to be relied upon to protect minorities . . .' Indeed, the stigma of 'bastardy' in American society is so strong that illegitimates may be even more disabled than nonwhites from forming a political force to effect changes on a social or legislative level," Gray and Rudovsky, *supra* (118 U. Pa. L.R. at 6-7).

This problem is particularly acute as it affects persons of illegitimate birth. While most racial and religious minorities have no hesitancy in associating for the purpose of advancing their mutual interests, the very act of conceding illegitimacy evokes public opprobrium, and tends to exacerbate the very thing that the hapless victim is complaining about. Compare *National Association For The Advance-*

ment of Colored People v. Alabama, 357 U.S. 449, 459 (1958).

The defect in the classification here is not over or under-inclusiveness, but the reasonableness of the basis of the classification itself. Krause, "Equal Protection For The Illegitimate", 65 Mich. L.R. 477, 486 (1967). In *Levy v. Louisiana*, 391 U.S. 68 (1968), illegitimacy was held to be an invalid basis of classification with respect to wrongful death recovery for the loss of a mother, the Court declaring that: "We conclude that it is invidious to discriminate against them when no action, conduct or demeanor of theirs is possibly relevant to the harm that was done the mother" 391 U.S. at 72.

In *Labine v. Vincent*, 401 U.S. 532 (1971), the Court upheld a Louisiana statute which barred the illegitimate children from sharing equally with the legitimate children of a father who died intestate, declaring that, "[T]he choices reflected by the intestate succession statute are choices which it is within the power of the State to make."

But merely because illegitimacy may be relevant to intestate succession, where a state may have a compelling state interest in the stability of land titles, *Strahan v. Strahan, supra*, it does not also follow that the same rule applies with respect to serviceman's life insurance, for here the statute is a federal one concerned with an entirely different purpose than intestacy. The statutory purpose here was "to provide a substitute source of income for that lost by the insured's death", *Metropolitan Life Ins. Co. v. Thompson, supra*, and illegitimacy is irrelevant to that purpose.

This difference in statutory purpose also disposes of the basis relied upon in Labine to support the classification as applied to intestate succession, i.e., as being one designed to "establish, protect and strengthen family life . . ."[3] Here,

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[3]An often quoted exposition of the doctrine of "family unity" supporting distinctions based on illegitimacy is found in Davis, "Illegitimacy and the Social Structure," 45 Am. J. Sociology 215, 219 (1939), where it is said:

there is no evidence of any legislative judgment that Congress was concerned with such considerations. There is such a judgment as to intestate succession in Georgia.[4] Congress was concerned, however, with providing a substitute source of income for those likely dependent upon deceased servicemen, and under Georgia law, a father is legally obligated to support an illegitimate child, Ga. Code §74-202, and is guilty of the crime of abandonment upon failing to do so. Code §74-9902. By itself, this indicates that Georgia law does not consider "family unity" a compelling state interest, for if the father can be imprisoned for failing to support his illicit offspring, it goes without saying that the unity of the family would hardly be jeopardized more by permitting such children to share in insurance proceeds after his death.

Nor can it be plausibly maintained that there is a compelling state interest in discouraging promiscuity. To begin with, centuries of experience have demonstrated that such laws have utterly failed to accomplish this result. Krause, *supra* (65 Mich. L.R. at 492); Note, "Equal Protection and

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> "The gist of the theory is that the function of reproduction can be carried out in a socially useful manner only if it is performed in conformity with institutional patterns, because only by means of an institutional system can individuals be organized and taught to cooperate in the performance of this long-range function, and the function be integrated with other social functions. The reproductive or familial institutions constitute the social machinery in terms of which the creation of new members of society is supposed to take place. The birth of children that do not fit into this machinery must necessarily receive the disapproval of society, else the institutional system itself, which depends upon favorable attitudes in individuals, would not be approved or sustained."

[4]Ga. Code §113-904 declares: "Bastards have no inheritable blood, except that given to them by express law. They may inherit from their mother, and from each other, children of the same mother, in the same manner as if legitimate. Legitimate and illegitimate children of the same mother shall inherit alike the estate of the mother. If a bastard dies leaving no issue or widow, his mother, brothers, and sisters shall inherit his estate equally. In distributions under this law the children of a deceased bastard shall represent the deceased parent."

the Applicability of Levy v. Louisiana to Succession Law," 44 Tul. L.R. 640 (1970). One of every 16 persons is illegitimate, Krause, *supra*, and the rate of illegitimacy for both white and non-white persons in this country increased between 1963 and 1965, Gray & Rudovsky, *supra* (118 U. Pa. L.R. at 6). This same argument was rejected by the Court in *Glona v. American Guaranty & Liability Insurance Co.*, 391 U.S. 73, 75 (1968) where it was said: "Yet we see no possible rational basis . . . for assuming that if the natural mother is allowed recovery for the wrongful death of her illegitimate child, the cause of illegitimacy will be served. It would indeed be farfetched to assume that women have illegitimate children so that they can be compensated in damages for their death." Moreover, this objective cannot be accomplished by punishing the child for the sins of the parents, and the state may not penalize one because of a status over which he has no control, *Robinson v. Louisiana*, 370 U.S. 660 (1962), anymore than it can discriminate against one because of the color of his skin—a status over which he equally has no control. Gray & Rudovsky, *supra*, 118 U. Pa. L.R. at P. 6. And, as held by the Court in *Aptheker v. Secretary of State*, 378 U.S. 500, 508 (1964): "It is a familiar and basic principle, recently reaffirmed in NAACP v. Alabama, 377 U.S. 288, 307, 12 L.Ed. 2d 325, 338, 84 S. Ct. 1302, that 'a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.'"

A compelling state interest is not served by the classification on the reasoning that difficult questions of proof would be presented, and fraudulent claims encouraged.[5] This same argument was rejected by this Court in *Glona*,

[5]Georgia law contains an in rem type procedure under which all claimants can be required to come in and assert their interest to assets in administration, after which, "all parties interested in said assets shall be forever barred from intervening in the case." Code §37-410.

391 U.S. at 76, and much of what has been said above with respect to discouraging promiscuity also applies here.

In most instances, the truth is that discrimination against illegitimates is based neither on any rational basis or any compelling state interest, but upon prejudice—the influence of the church and the fact that in its formative stages all laws were made by men desirous of limiting the claims of their illegitimate children. Krause, *supra*, 65 Mich. L.R. at 498-9, or what one writer has characterized as "[S]ociety's distaste for the parents' activity." Note, "Inheritance Rights of Illegitimate Children Under the Equal Protection Clause", 54 Mich. L.R. 1336, 1344 (1970).

It is submitted that in the present context, prejudice is no more valid to the state's objective than it was in *Brown v. Board of Education*, *supra* or in *Loving v. Virginia*, *supra*.

IV. DISCRIMINATION AGAINST ILLEGITIMATES FALLS MORE HEAVILY UPON NEGROES, AND IS UNCONSTITUTIONAL FOR THIS ADDITIONAL REASON.

Of the 2 1/2 million illegitimate surviving children born between 1940 and 1957 in the United States, 1 1/2 million were non-white, and only 1 million were white. (Krause, *supra*). Between 1963 and 1965, the rate for illegitimate births for non-whites increased from 235.9 per thousand births to 263.2 per thousand. Gray & Rudovsky, *supra* (118 U. Pa. L.R. at p. 6).

Statistics placed in evidence below indicate that in 1963, 24% of all non-white births in the nation were illegitimate (A. 30). In 1957, there were 8,872 non-white, as against 1,036 white, illegitimate births in Georgia (A. 35). In 1880, only one-third of all Negro children were born in wedlock in the United States (A. 32).

Petitioner here who is a Negro (A. 55), submitted in support of his motion for summary judgment the affidavits of two professors of family relations and psychology at the University of Georgia (A. 27, 31). These deponents declare

that the illegitimacy rate is much greater for Negroes than for whites, due to economic deprivation, discrimination, and the residual effects of the institution of slavery. Slaves were bred like animals, marriage among them was discouraged, and was a temporary contract, vulnerable to the whims of their masters (A. 29, 32). In some communities, nearly half of the Negro population is illegitimate (A. 30). This case itself reflects that both petitioner and his mother were illegitimate (A. 80), and the father of deceased also fathered two illegitimate children (A. 75).

While these two affidavits were not accepted in evidence (A. 90), they nevertheless may be judicially noticed as "legislative" facts. *McCormick on Evidence, 705,* §329; *United States v. Carolene Products Co.,* 304 U.S. 144, 154 (1938).

Almost 50 years ago, a distinguished Negro educator born and reared in the same Georgia county as petitioner had occasion to write, concerning the plight of the Negro, that:

> "'Life, therefore, among the plantation slaves, excepting the house servant personnel, was maintained on a plane parallel to that of domestic animals. Slaves were bred for the market to meet the ever increasing demands of the Southwestern cotton belt. It is estimated that 80,000 slaves were sold annually from the upper slave states, Maryland, Virginia, North Carolina, Tennessee, Delaware, Kentucky, and Missouri. Slave women were valuable in proportion as they were able to breed children who could be sold or trained as plantation workmen." Brewer, "Some Effects of the Plantation System Upon The Ante-Bellum South," 11 Ga. Hist. Quarterly 250, 268 (1927).

Here, the classification would fall heaviest upon Negro children, whose disadvantaged position this Court has judicially noticed to be the result in part of past discrimination. *Gaston County v. United States,* 395 U.S. 285 (1969), and see *Calhoun v. Latimer,* 4 Race Rel. L.R. 576 (1959), where judicial notice was taken of the fact that the Atlanta public schools were segregated for many years, and see also

Hunt v. Arnold, 172 F. Supp. 847 (D.C. Ga. 1959), and Constitution of Georgia, 1945, Art. VIII, Sec. I, Par. I; Constitution of 1877, Art. VIII, Sec. I, Par. I, both requiring segregated schools. Although the classification be neutral on its face, it nevertheless cannot stand where it is discriminatory in operation because continuing the effects of past discrimination. *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971). Classifications based upon race are constitutionally suspect, *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954), are subject to "the most rigid scrutiny", *McLaughlin v. Florida*, 379 U.S. 184, 191 (1964); *Loving v. Virginia*, 388 U.S. 1, 11 (1967), and must be "carefully confined". *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 670 (1966).

The effect of such a classification here would be to disentitle fully one-fourth of all Negro children to benefits under policies of insurance written under the Serviceman's Life Insurance Act and the Government Employees Insurance Act—at least where no beneficiary is designated by name.

It is interesting to note that at one time Georgia law expressly recognized the peculiar position of its Negro population with respect to illegitimacy, for an act of 1866 declared that "every colored child heretofore born is declared to be the legitimate child of his mother, and also of his colored father, if acknowledged by such father." See *White v. Ross*, 40 Ga. 339 (1869). It is respectfully submitted that the due process and equal protection clause compels the same recognition today, for the continuing effects of those conditions extant many years ago, still persist.

CONCLUSION

Over 120 years ago, the Supreme Court of Georgia, in upholding a legislative act legitimatizing two illegitimate children, declared:

> "There is a growing tendency everywhere, and especially in this country, to relax the ancient rigor of the law in respect to bastards, and to look to the Penal Code, and to the guilty parties for the prohibition and prevention of fornication and adultery, rather than visit the vengeance of the law upon the innocent heads of the unfortunate offspring." *Beall v. Beall*, 8 Ga. 210, 212 (1850).

In a matter purely of state concern, it may well be within the power of the Georgia Supreme Court, as the majority of that Court did here, to retrogress to the days of Blackstone when illegitimates were considered *filius nullius*, although as we have endeavored to show above, the Constitution of the United States precludes such blind adherence to the dead hand of the past in the present context. But aside from this, it is submitted that the Georgia Supreme Court should not be permitted to transplant its antediluvian and misplaced notions of morality into a federal statute and thereby elevate them to the level of national policy. The judgment of the Supreme Court of Georgia should be reversed.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

NO. 70-5344

LORENZO WILLIS, A MINOR, BY WILLIE WILBON, NEXT FRIEND,
Petitioner

VS:

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF OF RESPONDENT THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

NO. 70-5344

LORENZO WILLIS, A MINOR, BY WILLIE WILBON, NEXT FRIEND,
Petitioner

VS:

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
Respondent

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

BRIEF OF RESPONDENT THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

OPINIONS BELOW

Respondent accepts petitioner's recital of the opinions below.

JURISDICTION

Respondent does not dispute the accuracy of petitioner's jurisdictional statement. However, respondent submits that the writ of certiorari to the Supreme Court of Georgia should be dismissed as havng been improvidently granted in that there are now no special or important reasons for reviewing this case, in view of the recent amendment to the Servicemen's Group Life Insurance Act. This amendment, approved December 15, 1971, shortly after the writ of certiorari was granted, defines the word "child" [85 Stat. 642 (1971)] and fully resolves the issues presented to the Court in this case. Accordingly, this Court now has before it little more than a civil action for $10,000 on a life insurance policy, and the outcome of this litigation will affect only the parties involved, not the public in general. Respondent therefore submits that this case is no longer properly the subject of consideration by the Court because there are now no special and important reasons to consider this case. U. S. Sup. Ct. R. 19 (1). For further discussion of this point, see Point IV of the ARGUMENT, *infra.*

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Respondent agrees with petitioner's enumeration of the Constitutional provisions and federal statutes involved, except that petitioner omitted from his brief the December 15, 1971 amendment to the Servicemen's Group Life Insurance Act, which provides in pertinent part:

"Section 765 of title 38, United States Code, is

amended by adding the following definitions thereto:

'(7) The terms "widow" or "widower" means a person who is the lawful spouse of the insured member at the time of his death.

'(8) The term "child" means a legitimate child, a legally adopted child, an illegitimate child as to the mother, or an illegitimate child as to the alleged father, only if (a) he acknowledged the child in writing signed by him; or (b) he has been judicially ordered to contribute to the child's support; or (c) he has been, before his death, judicially decreed to be the father of such child; or (d) proof of paternity is established by a certified copy of the public record of birth or church record of baptism showing that the insured was the informant and was named as father of the child; or (e) proof of paternity is established from service department or other public records, such as school or welfare agencies, which show that with his knowledge the insured was named as the father of the child.

. . .

"Sec. 2. The provisions of this Act shall apply only to Servicemen's Group Life Insurance in effect on the life of an insured member who dies on or after the date of enactment of this Act."

85 Stat. 642 (1971), 38 U.S.C. § 765, as amended (approved December 15, 1971).

QUESTIONS PRESENTED

(1) Whether, in view of congressional silence on the meaning of the term "child" in the beneficiary

clause of the Servicemen's Group Life Insurance Act, the Supreme Court of Georgia properly referred to the law of the domicile of the deceased serviceman to determine the meaning of "child," rather than to some federal law of domestic relations.

(2) Whether defining "child" in the Servicemen's Group Life Insurance Act according to Georgia law operated to violate petitioner's constitutional rights to equal protection and due process of law.

STATEMENT

Respondent does not accept petitioner's Statement of the case and submits the following Statement.

Prudential is an insurance company which insured the life of Johnny Cleveland Simpson in the amount of $10,000.00 in accordance with the Servicemen's Group Life Insurance Act [79 Stat. 880 (1965), as amended, 84 Stat. 326 (1970), 38 U.S.C. § 765, *et seq.*] (A. 4, 12). This Act provides for insurance for members of the armed forces while upon active duty.

Johnny Cleveland Simpson died on September 19, 1968, while on active duty in the United States Army (A. 4, 12). At the time of his death, the insured was not married and was survived only by his father, Cleveland Simpson, of Elberton, Georgia (A. 64). The insured, Johnny Cleveland Simpson, elected for his insurance benefits to devolve by law, pursuant to 38 U.S.C. § 770(a). He made no designation as to the specific beneficiary (A. 15). When no designation is made, the beneficiary provisions of the Servicemen's Group Life Insurance Act provide that the benefits shall be paid to the person or persons surviving at the

date of the insured's death in the following order of precedence: widow or widower, child or children, parents of such member or the survivor of them, executor or administrator, or other next of kin [79 Stat. 883 (1965), 38 U.S.C. § 770(a)].

Upon demand of the insured's father, Cleveland Simpson, Prudential paid the proceeds of the policy to him (A. 66).

Petitioner alleges that he is the illegitimate child of the insured, Johnny Cleveland Simpson (A. 3), and contends that as the alleged illegitimate child of the insured he is entitled to be regarded as a "child" under the policy and should be paid the proceeds of the policy (A. 4-5).

Although petitioner contends that the deceased serviceman had acknowledged petitioner as his son (see p. 4 of petitioner's brief), there is no written acknowledgment or judicial determination of such paternity. Furthermore petitioner's contention that the Social Security Administration and the Veterans' Administration have recognized the deceased serviceman as petitioner's father is not supported by the record (A. 59). The birth certificate also fails to name a father (A. 61).

Petitioner brought suit in the Superior Court of Elbert County against respondent to recover the sum of $10,000.00 under the Servicemen's Group Life Insurance Act as a result of the death of Johnny Cleveland Simpson. The trial court granted petitioner's motion for summary judgment and denied respondent's cross-motion for summary judgment. The Court of Appeals of Georgia upheld the decision of the trial court. *Pru-*

dential Insurance Company v. Willis, 123 Ga. App. 150, 179 S.E.2d 688 (1970). The Supreme Court of Georgia reversed, and relying on *DeSylva v. Ballentine*, 351 U.S. 570 (1956), held that the meaning of "child" in the Act should be determined by reference to state law. *Prudential Insurance Company v. Willis*, 227 Ga. 619, 182 S.E.2d 420 (1971). Petitioner filed his petition for a writ of certiorari to the Supreme Court of Georgia on June 10, 1971 and this Court granted certiorari on November 9, 1971.

SUMMARY OF ARGUMENT

I. The Supreme Court of Georgia properly referred to state law in determining the meaning of the phrase "child or children" in the Servicemen's Group Life Insurance Act. The Act did not define that phrase at any time pertinent to this action. The law is clear that when Congress is silent as to the meaning of a particular familial relationship in a statute, reference should be made to state law for definition because there is no federal law of domestic relations. *DeSylva v. Ballentine*, 351 U.S. 570 (1956).

Petitioner has attempted to distinguish *DeSylva* by characterizing it as a decision involving only the Copyright Act, whereas the instant case involves the Servicemen's Group Life Insurance Act. This distinction is refuted by the broad language of *DeSylva* which holds that the meaning of an undefined familial relationship in a federal statute should be determined by reference to state law. Moreover, the general scheme of the Servicemen's Group Life Insurance Act is to refer to state law to define the class of beneficiaries.

II. Up until the recent amendment on December 15, 1971, Congress has always intended that "child" in the beneficiary clause of the Servicemen's Group Life Insurance Act be defined under state law. This was most recently confirmed by the amendment to the Act and the legislative history of the amendment. Both the House and Senate reports point out that prior to the effective date of the amendment, the meaning of the terms "child" and "children' in the Act was to be determined by reference to state law. Thus, in addition to the holding of this Court in *DeSylva, supra*, it was the expressed intent of Congress that reference be made to state law.

III. The Fourteenth Amendment does not deny the states power to make classifications and to distinguish between legitimates and illegitimates. In *Labine v. Vincent*, 401 U.S. 532 (1971), this Court held that an intestacy statute barring illegitimate children from sharing in their father's estate does not violate the constitutional rights of illegitimate children.

The Court should follow *Labine* in this case. The holding there that a state may properly exclude an illegitimate from receiving benefits from his father controls the constitutional question raised by petitioner in this case.

IV. The writ of certiorari should be dismissed as having been improvidently granted because the December 15, 1971 amendment which defines "child" for the purposes of Servicemen's Group Life Insurance prevents the questions raised in this case from ever being raised again, at least with respect to insured servicemen who die after December 15, 1971. In view of the amendment, this case is now nothing more

than a $10,000 civil action which will affect only the parties involved and not the public in general. This Court should not consider a case with such limited importance. *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70 (1955).

ARGUMENT

I. THE SUPREME COURT OF GEORGIA PROPERLY REFERRED TO STATE LAW IN DETERMINING THE MEANING OF THE PHRASE "CHILD OR CHILDREN" IN THE BENEFICIARY CLAUSE OF THE SERVICEMEN'S GROUP LIFE INSURANCE ACT [79 Stat. 883 (1965), 38 U.S.C. § 770] WHEREIN THAT PHRASE WAS UNDEFINED AT ALL TIMES RELEVANT TO THE ACTION BEFORE THIS COURT.

The Supreme Court of Georgia properly referred to Georgia law in determining the meaning of the phrase "child or children" in the Servicemen's Group Life Insurance Act, 79 Stat. 883 (1965), as amended, 84 Stat. 326 (1970), 38 U.S.C. §§ 765, 770. The Act did not define that phrase at any time pertinent to this action. Under settled decisions of this Court, the law is clear that when Congress is silent as to the meaning of a particular familial relationship in a federal statute, reference should be made to the relevant state law for a definition. *DeSylva v. Ballentine*, 351 U.S. 570 (1956); *Seaboard Air Line Railway v. Kenney*, 240 U.S. 489 (1916); *see also Blagge v. Balche*, 162 U.S. 439 (1896); *Hutchinson Investment Co. v. Caldwell*, 152 U.S. 65 (1894).

DeSylva v. Ballentine, supra, is a landmark decision in which this Court looked to state law to de-

termine whether an illegitimate was a "child" with respect to renewal rights under the Copyright Act, wherein the term was not defined. 61 Stat. 652, 17 U.S.C. § 1, *et seq.* (1947). This Court held:

> "We come, then, to the question of whether an illegitimate child is included within the term 'children' as used in § 24 [of the Copyright Act]. The scope of a federal right is, of course, a federal question, but that does not mean that its content is not to be determined by state, rather than federal law. . . . This is especially true where a statute deals with a familial relationship; there is no federal law of domestic relations, which is primarily a matter of state concern.
>
> ". . . The word 'children', although it to some extent describes a purely physical relationship, also describes a legal status not unlike the others. To determine whether a child has been legally adopted, for example, requires a reference to state law. We think it proper, therefore, to draw on the ready-made body of state law to define the word 'children' [in the Act]." *Id.* at 580-81.

The *DeSylva* case is controlling authority in support of the Supreme Court of Georgia's decision in which that court referred to state law to determine the meaning of the phrase "child or children" in the Servicemen's Group Life Insurance Act. *Prudential Insurance Co. v. Willis*, 227 Ga. 619, 182 S.E.2d 420 (1971). Moreover, *DeSylva* clearly establishes that petitioner's argument to the effect that the Supreme Court of Georgia erred by not "undertaking to discover a federal rule to govern the question" is totally without foundation. *See Grove v. Metropolitan Life Insurance*

Company, 271 F.2d 918, 919 (4th Cir. 1959); *Varker v. Metropolitan Life Insurance Company*, 184 F. Supp. 159 (M.D.N.C. 1960); *Metropolitan Life Insurance Company v. Fletcher*, Civil Action No. 67-131 (N.D. Ala., July 28, 1967) (unreported decision); *see also Brantley v. Skeens*, 266 F.2d 447 (D.C. Cir. 1959); *Tatum v. Tatum*, 241 F.2d 401, 405 (9th Cir. 1957).

Undeniably, Congress did not define the phrase "child or children" in the beneficiary clause of the Servicemen's Group Life Insurance Act during any period of time relevant to the matter before this Court. 79 Stat. 883 (1965), 38 U.S.C. §770(a); 117 Cong. Rec. S. 20565 (daily ed. December 4, 1971); 117 Cong. Rec. H. 11000 (daily ed. November 15, 1971); H.R. 92-629, 92d Cong., 1st Sess (1971); 1965 U.S. Code Cong. & Admin. News 3232; *see Stribling v. United States*, 293 F. Supp. 1293 (E.D. Ark. 1968). Accordingly, the issue concerning reference to state law before this Court involves the idential issue decided by this Court in the *DeSylva* case.

In an attempt to escape the clear wording and effect of the *DeSylva* decision, petitioner tries to distinguish that case on two grounds: (1) it involved only the Copyright Act, not group life insurance for servicemen; and (2) the Copyright Act concerns only the creation and protection of a right needed to encourage literary and artistic achievement, not devolution of property upon death. As to the first "distinction" advanced by petitioner, the very language of Justice Harlan's opinion in *DeSylva* contradicts petitioner's argument. The opinion broadly states that the content of a federal statute should be determined by state law, rather than federal, particularly where the statute

deals with a familial relationship, because there is no federal law of domestic relations. Clearly, the Act at issue before this Court deals with familial relationships in designating beneficiaries. Another reason given by Justice Harlan for referring to state law is that the general scheme of the Copyright Act is to refer to state law to define its terms. As with the Copyright Act, it would certainly be necessary under the Servicemen's Group Life Insurance Act to refer to state law to determine who was the widow or widower, or the duly appointed executor or administrator of the estate of the serviceman. Moreover, the statute expressly refers the administrator of the Act to state law to determine the "next-of-kin" of the serviceman. Accordingly, the general scheme of this Act, as with the Copyright Act, is to refer to state law to define these familial relationships.

Petitioner's second argument in attempting to distinguish the *DeSylva* case is an argument raised by the United States Court of Appeals for the Third Circuit in *Metropolitan Life Insurance Company v. Thompson*, 368 F.2d 791 (3d Cir. 1966), *cert. denied* 388 U.S. 914 (1967). The *Thompson* opinion reasoned that there is a basic difference in congressional purpose between a statute which deals with the creation and passing on to succeeding generations of accumulated wealth, as in the Copyright Act, and a statute which provides a substitute source of income for those dependent on the deceased, as in a federal insurance act. Responding to petitioner's argument, respondent shows that the Servicemen's Group Life Insurance Act in no sense guarantees the substitute source of income for those dependent on the deceased. It expressly al-

lows the insured to designate anyone as his beneficiary under the Act without regard to dependency. The insured may name as beneficiary of the policy a friend, an acquaintance, a stranger or anyone without limitation. Petitioner's companion argument that an illegitimate is eligible for a substitute source of income because of the Georgia law requiring a putative father to support his illegitimate children is without merit. There is no obligation for a father to leave any of his estate to his illegitimate children. On the contrary, illegitimates can inherit only from their mother and other children of the same mother under Georgia law. Ga. Code Ann. §113-904.

Moreover, the distinction attempted by petitioner based upon the *Thompson* case is irrational when viewed in perspective. In order to adopt petitioner's argument, it would be necessary to postulate as follows: (1) Copyright royalties are not a source of income which could support a deceased's dependents;[1] (2) insurance benefits are not a form of wealth accumulated over the years by the payment of premiums which could be passed to succeeding generations. On its face, petitioner's argument in attempting to distinguish *DeSylva* is illogical and without foundation.

Petitioner has cited a series of Supreme Court cases for the proposition that the Court should look to some "federal law" to determine the scope of familial terms in federal statutes, when such terms are undefined. Respondent maintains that these cases do not

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1 The *DeSylva* opinion specifically refutes any such argument by pointing out: "The evident purpose of § 24 [of the Copyright Act] is to provide for the family of the author after his death." *Id.* at 582.

support petitioner's argument. For instance, in *Calhoun Gold Mining Company v. Ajax Gold Mining Company*, 182 U.S. 499 (1901), the dispute concerned overlapping mining claims. This Court simply decided what the federal law on mining claims should be. *Calhoun* did not raise a question about the meaning of a particular term in a federal statute.

Petitioner also relies on *Clearfield Trust Company v. United States*, 318 U.S. 363 (1943). The question facing this Court there was whether the time in which the United States must give notice of a forgery on commercial paper to a collecting bank was determined by state or federal law. This case is inapposite because it concerns the obligations and duties of the United States when exercising a Constitutional power, not the meaning of particular words in a federal statute.

In *Wissner v. Wissner*, 338 U.S. 655 (1950), the deceased held a National Service Life Insurance policy. The only question was whether California community property law superseded the federal statute in determining insurance beneficiaries. There was no question whether the party who received the benefits was within the class of familial relations described in the federal statute. This is the same distinction recognized by Justice Harlan in *DeSylva* between the scope of a federal right and its content.

In *Woodward v. United States*, 341 U.S. 112 (1951), the question was whether the National Service Life Insurance Act allowed payments to an adopted brother. This Court noted that Congress was silent on this point and, without considering whether reference should be made to state law, broadly stated: "We are

persuaded by the policy against drawing such a distinction in the family relationship. Contemporaneous legal treatment of adopted children as though born into the family is a manifestation of that policy." *Id.* at 113. In our case, aside from the state law question, there is certainly no similar contemporaneous legal treatment of illegitimates.

The case of *United States v. Zazove*, 334 U.S. 602 (1948), involved only the question of whether a Veterans' Administration regulation issued pursuant to the National Service Life Insurance Act was consistent with that act. There was no question of the statute's meaning, which beneficiary was to take under the act, or whether state or federal law was to apply in determining which beneficiary took under that act.

In *United States v. Oregon*, 366 U.S. 643 (1961), a state intestacy statute conflicted with the federal statute governing how property devolved upon the death of one living in a Veterans' Administration hospital. This Court held that although the devolution of property is an area normally left to the states, in this case the federal statute was a necessary and proper exercise of a power delegated to Congress. In our case, of course, there is no federal statute which directly contradicts state law. Therefore, it would appear that *United States v. Oregon* supports our position inasmuch as it recognizes that we should refer to state law to determine how this property should devolve.

Petitioner's reliance on a rather general statement made in *Reconstruction Finance Corporation v. Beaver*, 328 U.S. 204 (1946) is inexplicable. In that case, the question was whether unattached heavy ma-

chinery could be taxed by state and local governments as "real property" under Section 10 of the Reconstruction Finance Corporation Act, and whether state or federal law should define "real property". This Court reasoned that because the statute did not define "real property" and the legislative history was silent on this point, *local law* should control because concepts of real property are deeply-rooted state traditions. The devolution of property to various familial relations of a deceased is certainly no less deeply rooted a state tradition. Also, in *Beaver* this Court could have relied on the federal law of taxation to define "real property", whereas in our case there is no federal law of domestic relations.

Petitioner also relies on a rather general statement in *United States v. Standard Oil Company*, 332 U.S. 301 (1947), a case involving a subrogation claim, that the relation between the government and soldiers is particularly federal in character. Other, less general statements in the *Standard Oil* opinion would appear to support respondent's position. This Court recognized that "it may fairly be taken that Congress has consented to the application of state law, when acting partially in relation to federal interests and functions, through failure to make other provision concerning matters ordinarily so governed." *Id.* at 309. Certainly, the definition of a familial relation is ordinarily governed by state law. This Court also stated that the main reason for referring to federal law in Standard Oil was because the purpose of the suit against Standard Oil was to make whole the Treasury, not the individual soldier who was injured. It was primarily the government's interest involved, not the personal relation between the soldier and government giv-

ing rise to the liability. In our case, there is absolutely no government interest involved.

Petitioner's inability to refer to any Supreme Court decision contrary to the principle of law established in the *DeSylva* case is understandable in that *DeSylva* clearly and expressly established that in the absence of any definition or congressional guidelines, familial terms shall be defined by reference to state law. The Supreme Court of Georgia in its decision of May 20, 1971, therefore, followed the mandate of this Court.

It is, of course, not contested by petitioner that the Supreme Court of Georgia properly interpreted Georgia law[2] in denying petitioner's claim. *See Foster v. Cheek*, 212 Ga. 821, 96 S.E.2d 545 (1957); *Dobyns v. Prudential Ins. Co.*, 227 Ga. 253, 179 S.E.2d 915 (1971); *Cooper v. Melvin*, 223 Ga. 239, 154 S.E.2d 373 (1967). Therefore, the judgment of the Supreme Court of Georgia in this case should be affirmed.

II. DURING ALL TIMES PERTINENT TO THIS ACTION, CONGRESS INTENDED FOR THE PHRASE "CHILD OR CHILDREN" IN THE BENEFICIARY CLAUSE OF THE SERVICEMEN'S GROUP LIFE INSURANCE ACT [79 Stat. 883 (1965), 38 U.S.C. § 770] TO BE DEFINED BY REFERENCE TO STATE LAW.

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[2] It is also undisputed that Georgia law is the proper body of law to which reference should be made. The serviceman lived in Elberton, Georgia until entering the Service (A. 64). No one has ever questioned which state's law should govern, once it is determined to look to state law.

On December 15, 1971 the Servicemen's Group Life Insurance Act was amended to specifically define the term "child" as used in the Act. Public Law 92-185, 85 Stat. 642 (approved December 15, 1971). The legislative history of the amendment clearly establishes that Congress prior to the effective date of the amendment intended for the terms "child" and "children" in the Act to be defined by reference to state law. Both the United States House of Representatives Report and the United States Senate Report concerning this amendment unequivocally point out that the then existing law required reference to state law for definitional purposes and thus resulted in some lack of uniformity between different states. These Congressional reports further urged the modification of the law in order to adopt the most widely accepted criteria established by *state law* for establishing that an illegitimate is the child of an alleged father. S.R. 92-545, 92d Cong. 1st Sess. (1971), 117 Cong. Rec. S. 20565 (daily ed. December 4, 1971), 1971 U.S. Code Cong. & Admin. News, 3376, 3531; H.R. 92-629, 92d Cong. 1st Sess. (1971).

Each of the respective legislative Reports of the House of Representatives and Senate provided:

> "Existing law dos not define the terms "widow, widower, child or parent" for SGLI purposes *thus presumably leaving such definitions to local state law.*" S.R. 92-545, 92d Cong. 1st Sess. (1971); H.R. 92-629, 92d Cong. 1st Sess. (1971) [Emphasis supplied.]

The Honorable Donald E. Johnson, Administrator of the Veterans' Administration, the officer responsible for the administration of the Servicemen's Group

Life Insurance, concurred with the content and substance of the Congressional Reports by formal letter to the Speaker of the House of Representatives and the Vice President of the United States. Additionally, the comments in Congress with respect to the amendment show that Congress intended to provide a substitute standard for the system of referring to state law under the then existing statute. For instance, Representative Montgomery in commenting upon the amendment before the House stated:

> "H.R. 9097 [the amendment] would also amend the Servicemen's Group Life Insurance provisions of the law so as to provide a uniform definition of the term 'widow', 'widower', 'child' and 'parent'. Experience under the program to date discloses that there is a great lack of uniformity in determining eligibility of beneficiaries *since the insurer must follow the state law applicable in each case.*" 117 Cong. Rec. H.11000 (daily ed. November 15, 1971) [Emphasis supplied].

These extracts and comments clearly establish that prior to December 15, 1971 the statute then in effect concerning Servicemen's Group Life Insurance provided for a reference to state law to determine the meaning of the term "child" therein. Otherwise, no necessity would have existed for an amendment to the Act.

In addition to the December 15, 1971 amendment, the Act itself, when read in conjunction with the general provisions relating to Veterans' benefits, clearly indicates that reference should be made to state law. Nowhere in the original Act or its legislative history are the words "child" and "children" defined. The

Act appears in Title 38 (Veterans' Benefits) of the United States Code. The general provisions of Title 38, 38 U.S.C. § 101 (4) (1964), expressly define "child" as including an illegitimate child under certain circumstances, but Congress specifically stated that the definitions in the general provisions were not to apply to Chapter 19 of Title 38, the chapter in which the Servicemen's Group Life Insurance Act appears. Congress' omission to define the term "child" in the pre-December 15, 1971 Servicemen's Group Life Insurance Act, and its excepting Chapter 19 from the application of the general provisions of Title 38, convincingly establishes that Congress intended that the terms "child" or "children" in the Servicemen's Group Life Insurance Act at the times in issue before this Court should be defined by reference to state law.

III. DEFINING "CHILD" IN GEORGIA SO AS TO EXCLUDE ILLEGITIMATES FROM BENEFITS UNDER THE ACT DOES NOT VIOLATE PETITIONER'S CONSTITUTIONAL RIGHTS TO EQUAL PROTECTION AND DUE PROCESS OF LAW.

Undeniably, the Fourteenth Amendment to the United States Constitution does not wrest from the states the power to make classifications and to distinguish between legitimate and illegitimate children. *Morey v. Doud*, 354 U.S. 457 (1957); *Labine v. Vincent*, 401 U.S. 532 (1971). In *Labine* this Court held that an intestacy statute barring illegitimate children from sharing in their father's estate does not violate the constitutional rights of illegitimate children to due process and equal protection of the law. This Court reasoned that even if it "were to apply the 'rational

basis' test to the Louisiana intestate succession statute, that statute clearly has a rational basis in view of Louisiana's interest in promoting family life and of directing the disposition of property left within the State." *Id.* at f.n. 6. This Court found it within the power of a state to distinguish between legitimates and illegitimates because the former are the product of a socially sanctioned, legally recognized marital relationship, and the latter are the product of an illicit relationship beyond the recognition of law.

This Court should follow *Labine* in this case because the question here also involves the devolution of property at death as determined by state law. Unlike *Levy v. Louisiana*, 391 U.S. 68 (1968), and *Glona v. American Guaranty and Liability Insurance Company*, 391 U.S. 73 (1968), cases on which petitioner heavily relies in this case, a question of tort law is not involved. There is no possibility here, as in *Levy*, that a tortfeasor will realize a windfall because of a plaintiff's ancestry. Respondent will be required to pay benefits in this case regardless of whether an illegitimate is involved or not. Also as in *Labine*, Georgia has not erected an insurmountable barrier before this illegitimate child. Petitioner could have benefited from the insurance policy in at least two ways: (1) by being legitimated by the deceased; or (2) by being designated as a beneficiary under the insurance policy.

Petitioner argues that *Labine* applies only to questions of intestate succession where the state may have a compelling interest in the stability of land titles. In this case, petitioner argues, the interpretation of a federal statute is involved; hence this Court should look to the purpose of the Servicemen's Group Life

Insurance to determine whether illegitimates can properly be excluded from the statute's benefits. Respondent strongly urges that the purpose of the Act is not relevant to whether illegitimates can be constitutionally excluded from benefiting under the Act. The question here is not whether it violated equal protection for Congress to draft an act which excludes illegitimates. The question is whether state law can constitutionally exclude an illegitimate from receiving benefits under a federal insurance policy if that insurance policy has left it to the states to determine who is included in certain classes of beneficiaries. As respondent has demonstrated, the Act requires reference to state law to determine whether illegitimates can benefit from it. Therefore, the *Labine* holding that a state may properly exclude illegitimates from benefits under these circumstances should control this Court's decision in this case.

Petitioner also argues that the interpretation of "child" so as to exclude illegitimates from benefiting under the insurance policy is a burden falling most heavily upon Negroes. Under the Georgia law, there is no discrimination against Negroes and in favor of whites. Rather, the legislature has made a choice between various familial relations within one Negro family, a choice which *Labine* recognized as constitutional. Furthermore, the evidence upon which Petitioner relies in this regard (A. 27-36) was ordered stricken by the trial court (A. 90) and this order was not appealed.

IV. IN VIEW OF THE ENACTMENT OF PUBLIC LAW 92-185 (85 Stat. 642) ON DECEMBER 15, 1971, WHICH DEFINES "CHILD"

FOR PURPOSES OF THE SERVICEMEN'S GROUP LIFE INSURANCE ACT, THE WRIT OF CERTIORARI GRANTED ON NOVEMBER 9, 1971 SHOULD BE DISMISSED AS HAVING BEEN IMPROVIDENTLY GRANTED.

Prior to December 15, 1971 and at the time this Court granted the writ of certiorari in this case, the Servicemen's Group Life Insurance Act, 79 Stat. 883, as amended, 84 Stat. 326 (1970), 38 U.S.C.A. § 765 *et seq.*, did not define or otherwise explain the term "child" as used in the Act. Because there was no definition of "child", the Georgia Supreme Court, relying on this Court's decision in *DeSylva v. Ballentine*, 351 U.S. 570 (1956), followed previous Georgia decisions and held that the meaning of "child" should be determined by reference to state law. Petitioner filed his petition for a writ of certiorari and because of the importance (at that time) of the questions presented and because of the frequency with which the questions could be expected to occur in the future, respondent did not object to the grant of certiorari. This Court, recognizing the importance of the issue at the time, granted the writ on November 9, 1971. Less than a week later, on November 15, 1971, the United States House of Representatives, followed by the Senate on December 4, 1971, adopted an amendment defining "child" and other familial terms as used in the Servicemen's Group Life Insurance Act. The amendment, by its terms, applies to Servicmen's Group Life Insurance in effect on the lives of insureds who die on or after the date of enactment of the amendment. The amendment was approved and became law on December 15, 1971. Thus, the benefits due to illegiti-

mate children of insured servicemen who die after December 15, 1971 will be determined by the terms of the new amendment and not by any decision this Court might render in this case.

In view of the amendment, respondent respectfully submits that the writ of certiorari to the Georgia Supreme Court should be dismissed as improvidently granted since this case is not now one in which there are "special and important reasons" for granting a writ, as required by Rule 19 of this Court's Rules.

In *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70 (1955), this Court granted a writ of certiorari to review a decision of the Supreme Court of Iowa concerning the right of a Winnebago Indian to be buried in defendant's cemetery. The Iowa decision was affirmed by an equally divided Court. While considering a petition for rehearing, it came to light that an Iowa statute which had been passed after the case had begun would bar the question presented from ever arising again in Iowa, even though the statute was not applicable to petitioner's case because of an exception in the statute relating to litigation pending at the time the statute was passed. In view of the new statute and the fact that the question before the Court would not present itself again, the petition for rehearing was granted, the judgment of affirmance was vacated, and the writ of certiorari was dismissed as improvidently granted because the case was no longer one in which there were "special and important reasons" for reviewing the Iowa decision. The Court reasoned as follows:

> "A Federal question raised by a petitioner may be 'of substance' in the sense that, abstractly con-

> sidered, it may present an intellectually interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues. *Nor does it sit for the benefit of the particular litigants.* [Citations omitted]. 'Special and important reasons' imply a reach to a problem beyond the academic or the episodic." *Id.* at 74 [Emphasis added].

The Court in *Rice* quoted Mr. Chief Justice Taft, in *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923), where he said:

> "If it be suggested that as much effort and time as we have given to the consideration of the alleged conflict would have enabled us to dispose of the case before us on the merits, the answer is that it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is *of importance to the public as distinguished from that of the parties, . . .* [Emphasis added].

Although not involving the dismissal of a writ of certiorari for being improvidently granted, the Court's language in *Magnum Import Co. v. Coty*, 262 U.S. 159, 163 (1923) is applicable. There the Court, again through Mr. Chief Justice Taft, denied a petition for certiorari and pointed out:

> "The jurisdiction to bring up cases by certiorari from the Circuit Courts of Appeals was given for two purposes, first . . . and second, to bring up cases involving questions of importance which it is in the public interest to have decided by this Court of last resort. The jurisdiction was not

conferred upon this Court merely to give the defeated party . . . another hearing."

It is clear from a review of the December 15, 1971 amendment to the Servicemen's Group Life Insurance Act that the question presented in the instant case will not occur again. The amendment defines the term "child" to include a legitimate child, a legally adopted child, and illegitimate children under certain circumstances. In view of this new definition, the question before this Court of whether to look to state law to determine the meaning of the word "child" will never arise again. That term and other familial terms are now specifically defined in the Act.

Therefore, this case has become a case which is important now only to the two parties involved. It has no public importance and is not deserving of further consideration by the Court. The case simply does not now involve "special and important reasons" for considering the questions presented, especially in view of this Court's decisions in *DeSylva v. Ballentine*, 351 U.S. 570 (1956) and *Labine v. Vincent*, 401 U.S. 532 (1971) in which this Court spoke to both of the questions which petitioner Willis has raised in this case.

CONCLUSION

For the foregoing reasons, respondent The Prudential Insurance Company of America respectfully urges this Court to affirm the judgment of the Supreme Court of Georgia, or in the alternative, to dismiss the writ of certiorari as improvidently granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing brief of respondent The Prudential Insurance Company of America upon petitioner by depositing three (3) copies of same in the United States mail with sufficient postage affixed thereto and addressed to petitioner's counsel as follows:

E. Freeman Leverett, Esquire
Heard, Leverett & Adams
Post Office Box 896
Elberton, Georgia 30635

I further certify that all parties required to be served have been served.

This 31st day of January, 1972.

A. FELTON JENKINS, JR.

WILLIS *v.* PRUDENTIAL INSURANCE COMPANY OF AMERICA

CERTIORARI TO THE SUPREME COURT OF GEORGIA

No. 70-5344. Argued February 28, 1972—Decided March 20, 1972

227 Ga. 619, 182 S. E. 2d 420, affirmed by an equally divided Court.

E. Freeman Leverett argued the cause and filed a brief for petitioner.

A. Felton Jenkins, Jr., argued the cause for respondent. With him on the brief was *Woodrow W. Lavender.*

PER CURIAM.

The judgment is affirmed by an equally divided Court.

MR. JUSTICE POWELL took no part in the consideration or decision of this case.